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(212) 837-6000

*Attorneys for Defendant Merck & Co., Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X		
	:	
MARY J. MAHAR,	:	
	:	
	:	No.: 08 Civ 3079
Plaintiff,	:	
	:	
-against-	:	
	:	DECLARATION OF
MERCK & CO., INC.,	:	VILIA B. HAYES
	:	
Defendant.	:	
----- X		

VILIA B. HAYES declares as follows:

1. I am an attorney admitted to practice before this Court and a member with the firm of Hughes Hubbard & Reed LLP, attorneys for defendant Merck & Co., Inc. ("Merck"). As such, I am fully familiar with the facts set forth herein. I make this declaration based on my own personal knowledge and the business records of the Firm.
2. I make this declaration in support of the Motion of Defendant Merck & Co., Inc. to Stay All Proceedings Pending a Decision on Transfer by the Judicial Panel on Multidistrict Litigation.
3. Attached hereto as Exhibit A is a true and correct copy of the "tag-along" letter dated April 1, 2008 to the Judicial Panel on Multi-District Litigation.


4. Attached hereto as Exhibit B are true and correct copies of the Transfer Orders issued by the MDL Panel in MDL-1657, dated June 20, 2005, August 11, 2005, September 13, 2005, October 21, 2005, December 2, 2005, February 14, 2006, April 11, 2006, April 13, 2006, June 14, 2006, August 10, 2006, October 18, 2006, December 18, 2006, February 8, 2007, April 18, 2007, June 14, 2007, August 3, 2007, October 17, 2007, and February 11, 2008.

5. Attached hereto as Exhibit C is a true and correct copy of the Order issued in *Denny v. Merck & Co., Inc.*, No. 04 Civ. 0526 (S.D. Tex. Dec. 6, 2004).

6. Attached hereto as Exhibit D is a true and correct copy of the Memorandum and Order issued in *Aguilar v. Merck & Co., Inc.*, No. 05-CV-4865 (SJ) (E.D.N.Y. Nov. 22, 2005).

7. Attached hereto as Exhibit E is a true and correct copy of the Order to Stay in *Campbell v. Merck & Co., Inc.*, No. 05-CV-6740L (W.D.N.Y. Mar. 1, 2006) and related cases.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
VILIA B. HAYES

Executed this  
3rd day of April, 2008

## Exhibit A

**Hughes  
Hubbard**

Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004-1482  
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Fax: 212-422-4726  
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April 1, 2008

VIA FEDERAL EXPRESS

Jeffrey N. Lüthi, Esq.  
Catherine Maida  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E. Room G-255, North Lobby  
Washington, D.C. 20002-8004

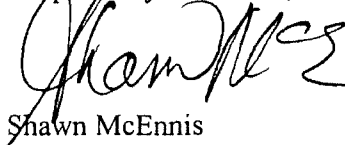
Re: In re: Vioxx® Marketing, Sales Practices and Products  
Liability Litigation, MDL Docket No. 1657

Dear Sir and Madam:

Pursuant to J.P.M.L. Rule 7.5(e), Merck hereby notifies the Panel of potential "tag-along actions." This letter is Merck's 308th notification of potential "tag-along actions" and includes cases that have recently been filed in or removed to federal court.<sup>1</sup> Courtesy copies of the complaints and docket sheets for these cases are enclosed.

1. *Alapeck v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03077 (S.D. N.Y.)
2. *Croft v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03078 (S.D. N.Y.)
3. *Dufresne v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03076 (S.D. N.Y.)
4. *Mahar v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03079 (S.D. N.Y.)
5. *Pitcher v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03075 (S.D. N.Y.)
6. *Raftis v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03067 (S.D. N.Y.)
7. *Santacrose v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03069 (S.D. N.Y.)
8. *Steinhoff et al., v. Merck & Co., Inc. et al.*, C.A. No. 1:08-cv-03074 (S.D. N.Y.)

Respectfully submitted,



Shawn McEnnis

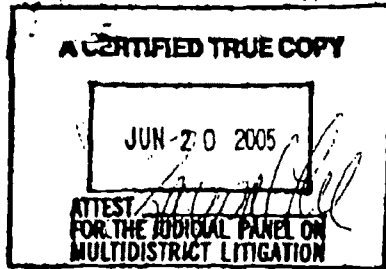
SM/eas

Enclosures

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1. In all these cases, Plaintiff dismissed the other pharmaceutical defendants before the cases were removed to S.D.N.Y.

## Exhibit B



FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

2005 JUN 23 P 12:29

LOPEZ, T. G. WHYTE  
CLERK

DOCKET NO. 1657

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

JUN 20 2005

FILED  
CLERK'S OFFICE

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**  
**IN RE VIOXX PRODUCTS LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL\* AND DAVID R. HANSEN, JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in the 34 actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., opposes the motions and favors inclusion of these actions in the centralized pretrial proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana, and that transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

To the Kentucky plaintiff who argues that she does not have the resources to litigate this matter in the Eastern District of Louisiana, we emphasize that since Section 1407 transfer is for pretrial proceedings, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. *See, e.g., Fed.R.Civ.P. 45(c)(3)(A)*. Furthermore, the judicious use of liaison counsel, lead counsel and steering committees will eliminate the need for most counsel ever to travel to the transferee district. And it is logical to assume that prudent counsel will combine their forces and

\* Judges Motz and Vratil took no part in the decision of this matter.

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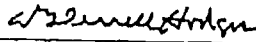
apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary. This streamlining combined with the uniform case management approach already instituted by the transferee judge will foreseeably lead to an overall savings in time and expense. *In re Asbestos Products Liability Litigation (No. VI)*, 771 F.Supp. 415, 422 (J.P.M.L. 1991).

To the Pennsylvania plaintiff who asserts that her action presents unique additional claims or factual questions rendering inclusion of the action in MDL-1657 unnecessary or inadvisable, and the Texas plaintiffs who argue against inclusion of their action in MDL-1657 because of the advanced stage of proceedings in this action, we believe that further refinement of the issues and close scrutiny by the transferee judge provide the better course. Whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that Panel Rule 1.6(a), R.P.J.P.M.L., 199 F.R.D. at 428, regarding transfer of files is suspended for this docket.<sup>1</sup>

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

<sup>1</sup> This Panel rule requires clerks of transferor district courts to forward to the clerk of the transferee district court the complete original file and docket sheet for each transferred action. Because of the voluminous files in this docket, we are suspending this rule. Instead, we will rely on the judgment of the transferee judge to request from the transferor district clerks or the parties whatever case files and docket sheets he needs.

## SCHEDULE A

MDL-1657 -- In re Vioxx Products Liability LitigationMiddle District of AlabamaEDLA  
SEC L/3*Yolanda King v. Merck & Co., Inc., et al.*, C.A. No. 2:05-165

05-2559

District of Arizona*Wayne Young v. Merck & Co., Inc.*, C.A. No. 2:05-307

05-2560

Middle District of Florida*Amparo Alvarez v. Merck & Co., Inc., et al.*, C.A. No. 6:05-171

05-1258

*Nelson Oquendo, et al. v. Merck & Co., Inc., et al.*, C.A. No. 6:05-172

05-2561

*Gloria Hernandez v. Merck & Co., Inc., et al.*, C.A. No. 6:05-221

05-1259

*Dallas Childers, et al. v. Merck & Co., Inc., et al.*, C.A. No. 6:05-222

05-1260

*Maria Diaz, et al. v. Merck & Co., Inc., et al.*, C.A. No. 6:05-239

05-1261

*Brenda Jurado v. Merck & Co., Inc., et al.*, C.A. No. 8:05-224

05-1262

*Felix Carvajal, et al. v. Merck & Co., Inc., et al.*, C.A. No. 8:05-276

05-1263

Northern District of Illinois*Kathleen Brown, etc. v. Merck & Co., Inc., et al.*, C.A. No. 1:05-1092

05-2562

Southern District of Illinois*Gerald Sumner, et al. v. Merck & Co., Inc.*, C.A. No. 3:04-864

05-2563

*Ida Akins v. Merck & Co., Inc., et al.*, C.A. No. 3:05-39

05-2564

Eastern District of Kentucky*Jacquelyn Washburn, etc. v. Merck & Co., Inc.*, C.A. No. 5:05-47

05-2565

- A2 -

Eastern District of MissouriEDLA  
SEC L/3

<i>Theresa Tuma, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-83</i>	05-2566
<i>Celestine Dale, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-84</i>	05-2567
<i>Debra Raymo, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-85</i>	05-2568
<i>Vernon Andrews, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-86</i>	05-2569
<i>Carol Thomas, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-87</i>	05-2570
<i>Sammy L. Underwood, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-88</i>	05-2571
<i>Arline Anderson, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-89</i>	05-2572
<i>Edna McGhee, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-90</i>	05-2573
<i>Regina Menderski, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-92</i>	05-2574
<i>Mary Stewart, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-93</i>	05-2575
<i>Gloria Singleton, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-94</i>	05-2576
<i>Kenneth Britton, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-96</i>	05-2577
<i>James Cerutti, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-97</i>	05-2578
<i>Arthur Hale, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-300</i>	05-2579
<i>Marlene Harris, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-301</i>	05-2580
<i>Sineria Jones, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-303</i>	05-2581
<i>Lois Woltz, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-307</i>	05-2582

Northern District of New York

<i>Richard F. Core, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 5:04-1367</i>	05-2583
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Northern District of Oklahoma

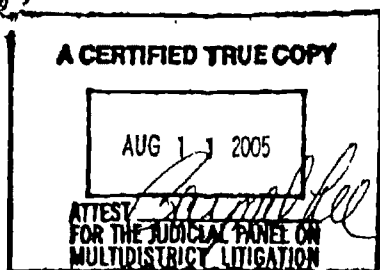
<i>Tommy Lee v. Merck &amp; Co., Inc., C.A. No. 4:04-930</i>	05-2584
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Western District of Pennsylvania

<i>Judith E. Orie, M.D. v. Merck &amp; Co., Inc., C.A. No. 2:04-1886</i>	05-2585
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Southern District of Texas

<i>Felicia Garza, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 7:05-17</i>	05-2586
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FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

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JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

AUG 11 2005

FILED  
CLERK'S OFFICEDOCKET NO. 1057  
MDL 1657

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

## IN RE VIOXX PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

## TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in the 30 actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

To the Ohio plaintiff who argues that she does not have the resources to litigate this matter in the Eastern District of Louisiana, we emphasize that since Section 1407 transfer is for pretrial proceedings, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. See, e.g., Fed.R.Civ.P. 45(c)(3)(A). Furthermore, the judicious use of liaison counsel, lead counsel and steering committees will eliminate the need for most counsel ever to travel to the transferee district. And it is logical to assume that prudent counsel will combine their forces and

\* Judge Motz took no part in the decision of this matter.

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- 2 -

apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary. This streamlining combined with the uniform case management approach already instituted by the transferee judge will foreseeably lead to an overall savings in costs to the parties. *In re Asbestos Products Liability Litigation (No. VI)*, 771 F.Supp. 415, 422 (E.D. La. 1991).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

## SCHEDULE A

MDL-1657 -- In re Vioxx Products Liability Litigation

	EDLA SEC. L/3
<u>Northern District of California</u>	
<i>Vick Kargodorian v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:05-937	05-3791
<i>Nora Olson, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:05-1256	05-3792
<u>Southern District of California</u>	
<i>Robert V. Purcell v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:05-443	05-3793
<u>District of Connecticut</u>	
<i>JoAnn Malek v. Eric Rosenberg, M.D., et al.</i> , C.A. No. 3:05-543	05-3794
<u>Middle District of Florida</u>	
<i>Migna Serrano, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 6:05-170	05-3795
<i>Conchita Merced-Torres, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 6:05-449	05-3796
<i>Samuel Diaz, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 6:05-472	05-3797
<i>Wayne Vigil, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 8:05-223	05-3798
<u>Southern District of Illinois</u>	
<i>Helen Wood v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:05-168	05-3799
<u>Eastern District of Missouri</u>	
<i>Curt Meng, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-194	05-3800
<i>Ronald Colbert, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-195	05-3801
<i>Carver Black, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-297	05-3802
<i>John Hodges, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-302	05-3803
<i>Renee Lockett, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-304	05-3804
<i>LeJuana Young, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-309	05-3805
<i>Kathryn Pueser, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-430	05-3806
<i>Chris Piechoinski, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-431	05-3807
<i>Lorraine Phillip, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-433	05-3808
<i>Barbara O'Bannon, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-434	05-3809
<i>Mary Miles, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-435	05-3810
<i>Jeffrey McDaniel, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-436	05-3811
<i>Louise McCarter, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:05-437	05-3812

- A2 -

Eastern District of Missouri [continued]EDLA  
SEC. L/3

<i>Norma Hubbard, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-438</i>	05-3813
<i>Delores Holmes, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-439</i>	05-3814
<i>Terry Frame, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-440</i>	05-3815
<i>Jane Cavins, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-441</i>	05-3816
<i>Charlesetta Butler, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-442</i>	05-3817

Northern District of Ohio

<i>Kimberly Kaiser, et al. v. Merck &amp; Co., Inc., C.A. No. 1:05-776</i>	05-3818
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Western District of Pennsylvania

<i>Mary Ellen Magnifico v. Merck &amp; Co., Inc., C.A. No. 2:05-386</i>	05-3819
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Northern District of West Virginia

<i>William David Lough, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 5:05-34</i>	05-3820
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JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

SEP 13 2005

FILED  
CLERK'S OFFICE

**DOCKET NOS. 1657 & 1699**

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**  
**IN RE VIOXX PRODUCTS LIABILITY LITIGATION**  
**IN RE BEXTRA AND CELEBREX MARKETING, SALES PRACTICES AND**  
**PRODUCTS LIABILITY LITIGATION**

*James Booker v. Merck & Co., Inc., et al., N.D. Texas, C.A. No. 3:05-496*

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.**  
**LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,**  
**KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

**ORDER OF TRANSFER WITH SIMULTANEOUS**  
**SEPARATION, REMAND AND TRANSFER**

Presently before the Panel are four motions relating to this Northern Texas action (*Booker*). The first motion is brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by the *Booker* plaintiff seeking to vacate the Panel's MDL-1657 order conditionally i) transferring *Booker* to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in the Vioxx litigation; and ii) simultaneously separating and remanding claims relating to prescription medications Bextra and Celebrex (manufactured by Pfizer Inc. (Pfizer)) to the Northern District of Texas. The *Booker* health care defendants support this motion. Defendants Pfizer and Merck & Co., Inc. (Merck) oppose the motion and urge effectuation of the Panel's order.

Also before the Panel are three separate motions seeking centralization of *Booker* with other related actions in one federal district for coordinated or consolidated pretrial proceedings relating to Bextra and Celebrex.<sup>1</sup> The *Booker* plaintiff opposes inclusion of this action in any Bextra and/or Celebrex multidistrict proceedings. The *Booker* health care defendants oppose inclusion of *Booker*, or claims relating to Bextra and Celebrex in this action, in any multidistrict docket involving these latter claims. Pfizer opposes i) centralization of the Bextra and Celebrex products liability actions, and ii) inclusion of any Vioxx claims in *Booker* in any Bextra and Celebrex multidistrict proceedings. Merck favors inclusion of claims related to Pfizer's Bextra and Celebrex in *Booker* in multidistrict proceedings involving these medications.

On the basis of the papers filed and hearing session held, the Panel finds that *Booker* involves

\* Judge Motz took no part in the decision of this matter.

<sup>1</sup> Two motions in MDL-1691 - *In re Bextra and Celebrex Products Liability Litigation* seek to include *Booker*, while a third motion seeks to include *Booker* in MDL-1699 - *In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation*.

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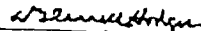
common questions of fact with i) actions in MDL-1657 previously transferred to the Eastern District of Louisiana, and ii) with actions in MDL-1699 recently centralized in the Northern District of California. The Panel further finds that transfer for inclusion in the coordinated or consolidated pretrial proceedings in those two districts will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Transfer is also appropriate for reasons expressed by the Panel in its original orders directing centralization in these two dockets. In MDL-1657, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005). Similarly, the Panel held that the Northern District of California was a proper Section 1407 forum for actions relating to Bextra and/or Celebrex. See *In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation*, \_\_\_ F.Supp.2d \_\_\_, 2005 U.S. Dist. LEXIS \_\_\_ (J.P.M.L. Sept. 6, 2005). Plaintiff's motion to remand *Booker* to state court can, in appropriate parts, be presented to and decided by each of the transferee courts. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

To the *Booker* plaintiff and the health care defendants who argue that it is not proper to split *Booker* into multiple pretrial proceedings and/or that they do not have the resources to separately litigate this matter, we emphasize that since Section 1407 transfer is for pretrial proceedings, there is usually no need for the parties and witnesses to travel to the transferee districts for depositions or otherwise. See, e.g., Fed.R.Civ.P. 45(c)(3)(A). Furthermore, the judicious use of liaison counsel, lead counsel and steering committees will eliminate the need for most counsel ever to travel to the transferee districts. And it is logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary. This streamlining combined with uniform case management approaches instituted or anticipated in these multidistrict proceedings will foreseeably lead to an overall savings in transaction costs. See *In re Asbestos Products Liability Litigation (No. VI)*, 771 F.Supp. 415, 422 (J.P.M.L. 1991).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action is transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in MDL-1657 - *In re Vioxx Products Liability Litigation*. The claims relating to Pfizer's Bextra and Celebrex prescription medications are separated and remanded, pursuant to 28 U.S.C. § 1407(a), to the Northern District of Texas.

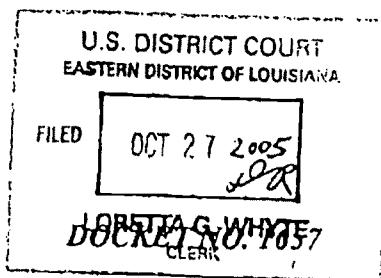
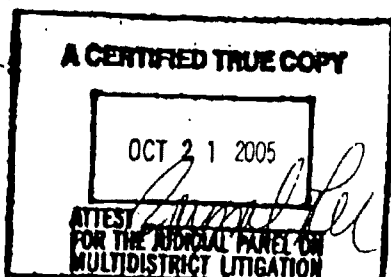
IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, the resulting Texas action involving claims relating to Bextra and Celebrex is transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Charles R. Breyer for inclusion in the coordinated or consolidated pretrial proceedings occurring there in MDL-1699 - *In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation*.

FOR THE PANEL:

  
Wm. Terrell Hodges  
Chairman

M000C31384

M008D31969

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

OCT 21 2005

FILED  
CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE VIOXX PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

## TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by the health care defendant in the Southern Texas action and plaintiffs in the remaining 47 actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

To the North Carolina plaintiff who argues that he does not have the resources to litigate his claims in the Eastern District of Louisiana and to the health care defendant in the Southern Texas action who argues that it is not proper to split the Texas action into multiple pretrial proceedings, we emphasize that since Section 1407 transfer is for pretrial proceedings, there is usually no need for the parties and witnesses to travel to the transferee districts for depositions or otherwise. See, e.g., Fed.R.Civ.P. 45(c)(3)(A). Furthermore, the judicious use of liaison counsel, lead counsel and steering

\* Judge Motz took no part in the decision of this matter.

— Fee \_\_\_\_\_  
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— Doc. No. \_\_\_\_\_

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committees will eliminate the need for most counsel ever to travel to the transfer districts. And it is logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary. These efforts, combined with uniform case management approaches instituted or anticipated in these multidistrict proceedings will foreseeably lead to an overall savings in transaction costs. See *In re Asbestos Products Liability Litigation (No. VI)*, 771 F.Supp. 415, 422 (J.P.M.L. 1991).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT FURTHER ORDERED that the claims against Pfizer Inc. (Pfizer) and the physician defendant in *Santos Villarreal Layton v. Dario Arango, M.D., et al.*, S.D. Texas, C.A. No. 7:05-149, relating to Pfizer's Celebrex prescription medication are separated and remanded, pursuant to 28 U.S.C. § 1407(a), to the Southern District of Texas.

FOR THE PANEL:

*Wm. Terrell Hodges*

Wm. Terrell Hodges  
Chairman

## SCHEDULE A

MDL-1657 – In re Vioxx Products Liability LitigationSouthern District of CaliforniaEDLA  
SEC. L/3

<i>Alvin Williams v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-943</i>	05-5272
<i>Margaret Stein v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-944</i>	05-5273
<i>Otis Anderson v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-945</i>	05-5274
<i>Joan Ongley v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-947</i>	05-5275
<i>Hilda Armenta v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-948</i>	05-5276
<i>Robert Levesque v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-949</i>	05-5277
<i>Clancy Lucille Holloway v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-950</i>	05-5278
<i>Laura Martinez v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-951</i>	05-5279
<i>Clarice Forbes v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-953</i>	05-5280
<i>Robert Castro v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-954</i>	05-5281
<i>Joseph Capozzi v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-957</i>	05-5282
<i>Anna Lemmons v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-958</i>	05-5283
<i>Richard Brown v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-959</i>	05-5284
<i>Aida Hernandez v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-960</i>	05-5285
<i>Harvey Persh v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-961</i>	05-5286
<i>Robert Scott v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-962</i>	05-5287
<i>Violet Abramson v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-963</i>	05-5288
<i>Carmen Esquer v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-964</i>	05-5289

Southern District of Illinois

<i>Rosie-May Spann v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-315</i>	05-5290
<i>James Steele, Jr., et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-339</i>	05-5291
<i>Greg Miller, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-361</i>	05-5292
<i>Wilma Gaston, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-362</i>	05-5293
<i>John Allen, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-377</i>	05-5294

Western District of Kentucky

<i>William Andrew Curl, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-324</i>	05-5295
<i>Brenda Cox, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-332</i>	05-5296
<i>Patrick Wayne Overall, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-333</i>	05-5297
<i>James Goodman v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-334</i>	05-5298
<i>Steven Clark v. Merck &amp; Co., Inc., et al., C.A. No. 3:05-335</i>	05-5299

Eastern District of Missouri

<i>Dorothy Ganser, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-557</i>	05-5300
<i>Letty Bess, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-568</i>	05-5301
<i>Arthur Mullins, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-569</i>	05-5302
<i>Dorothy Kassing, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-631</i>	05-5303
<i>Shirley Zook, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-632</i>	05-5304
<i>Andrew Kisty, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-665</i>	05-5305

- A2 -

Eastern District of Missouri (Continued)EDLA  
SEC. L/3

<i>Virginia Kell, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-666</i>	05-5306
<i>Mary Benson, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-668</i>	05-5307
<i>Earlie Douglas, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-669</i>	05-5308
<i>Ricardo Lara, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-671</i>	05-5309
<i>Loretta Trinidad, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-673</i>	05-5310
<i>David Moultrie, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-674</i>	05-5311
<i>Irene Rogers, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-675</i>	05-5312
<i>Charlotte Bohlke, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 4:05-837</i>	05-5313

Middle District of North Carolina

<i>Jimmy Reid v. Merck &amp; Co., Inc., C.A. No. 1:05-348</i>	05-5314
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Eastern District of Texas

<i>Elfriede Blacketer v. Merck &amp; Co., Inc., et al., C.A. No. 1:05-336</i>	05-5315
<i>Walter Maddox v. Merck &amp; Co., Inc., et al., C.A. No. 1:05-338</i>	05-5316

Southern District of Texas

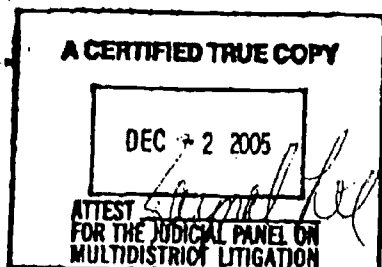
<i>Santos Villarreal Layton v. Dario Arango, M.D., et al., C.A. No. 7:05-149</i>	05-5317
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Western District of Washington

<i>Robert K. Waitt v. Merck &amp; Co., Inc., et al., C.A. No. 2:05-759</i>	05-5318
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Northern District of West Virginia

<i>Shelia Dalgo v. Merck &amp; Co., Inc., C.A. No. 5:05-48</i>	05-5319
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FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE  
DOCKET NO. 1657JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

DEC - 2 2005

FILED  
CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

## IN RE VIOXX PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

## TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by a health care defendant in the Southern District of Texas action and plaintiffs in the remaining actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

The opposing Tennessee plaintiff and the Texas health care defendant argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products*

\* Judge Motz took no part in the decision of this matter.

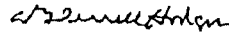
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*Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. See *In re StarLink Corn Products Liability Litigation*, No. 01-1748 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

A CERTIFIED TRUE COPY

2008-4-9

NO. 01-1748 (J.P.M.L. 2001)  
J.P.M.L. 2001-1748  
J.P.M.L. 2001-1748

## SCHEDULE A

MDL-1657 -- In re Vioxx Products Liability LitigationEDLA  
Sect. L/3Southern District of Alabama*Marquerite Woods v. Merck & Co., Inc., et al.*, C.A. No. 2:05-425 05-6339Middle District of Florida*Barbara Fowler-Browning, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-586 05-6340Northern District of Illinois*James Zafiratos v. Merck & Co., Inc., et al.*, C.A. No. 1:05-3784 05-6341Southern District of Illinois*Stanley Hayes v. Merck & Co., Inc., et al.*, C.A. No. 3:05-450 05-6342*Clara Kirkendall v. Merck & Co., Inc., et al.*, C.A. No. 3:05-562 05-6343*Mary Hardin v. Merck & Co., Inc., et al.*, C.A. No. 3:05-563 05-6344Western District of Kentucky*Lois Hammond, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-351 05-6345Eastern District of Missouri*Harriet Aldridge, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-847 05-6346*Mona Swint, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-879 05-6347*Sam Fife, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-880 05-6348*Vanita Copeland, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-881 05-6349District of Nevada*Duane Allen Carlson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-599 05-6350*Nina Baker, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-625 05-6351*Daniel Morrison, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-627 05-6352*Sharon Himmel, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-334 05-6353*Sean Regan, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-336 05-6354Western District of New York*Lynn Krieger v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6338 05-6355District of Oregon*Wayne S. Harger v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6184 05-6356

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Eastern District of Tennessee

EDLA  
Sect. L/3

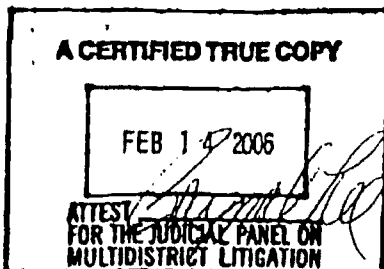
*Louise Denton v. Merck & Co., Inc.*, C.A. No. 2:05-170

05-6357

Southern District of Texas

*Jackie Roberts, etc. v. Juan Marcos Garcia, M.D., et al.*, C.A. No. 1:05-210

05-6358



DOCKET NO. 1657

FILED JUDICIAL PANEL ON  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
FEB 14 2006  
2006 FEB 15 PM 3:14  
FILED  
CLERK'S OFFICE  
LORETTA G. WHYTE  
CLERK

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION

SECT. L MAG 3

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

## TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 80 actions and by health care defendants in the District of Massachusetts action and the Western District of Texas action to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

Some opposing plaintiffs and the health care defendants argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL- 1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters;

\* Judge Motz took no part in the decision of this matter.

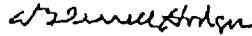
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Dec. No \_\_\_\_\_

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2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *See In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

## SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability LitigationMiddle District of AlabamaEDLA  
SEC. L/3*Theatus Rawdon Beaty v. Merck & Co., Inc., et al.*, C.A. No. 2:05-880

06-722

Southern District of Illinois*Elvin Elswick v. Merck & Co., Inc., et al.*, C.A. No. 3:05-645

06-723

*Stanely McNulty v. Merck & Co., Inc., et al.*, C.A. No. 3:05-661

06-724

*Gary Grizzell v. Merck & Co., Inc., et al.*, C.A. No. 4:05-4170

06-725

Eastern District of Kentucky*Ronald E. Smith, et al. v. Merck & Co., Inc.*, C.A. No. 3:05-68

06-726

*James Parsons, et al. v. Merck & Co., Inc.*, C.A. No. 5:05-412

06-727

*Gene Patterson, et al. v. Merck & Co., Inc.*, C.A. No. 5:05-413

06-728

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06-730

*Bonnie Engle v. Merck & Co., Inc.*, C.A. No. 6:05-565

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*James T. Bevins, et al. v. Merck & Co., Inc.*, C.A. No. 7:05-317

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*James Howell, et al. v. Merck & Co., Inc.*, C.A. No. 7:05-330

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*Harold Reiser v. Merck & Co., Inc., et al.*, C.A. No. 1:05-156

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*Carl D. Mahan, et al. v. Merck & Co., Inc.*, C.A. No. 3:05-565

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*Samuel Bain, et al. v. Merck & Co., Inc.*, C.A. No. 3:05-566

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*Wenceslaus Klimesh, et al. v. Merck & Co., Inc.*, C.A. No. 3:05-568

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*Glen Kelly v. Merck & Co., Inc.*, C.A. No. 3:05-569

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*Barry M. Kinslow v. Merck & Co., Inc.*, C.A. No. 3:05-570

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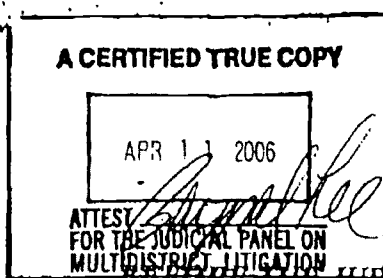
<i>Brian North v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 6:05-6475	06-800
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<i>Sulema L. Banda, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 5:05-950	06-802
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JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

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**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES,\* CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 94 actions and by health care defendants in the Northern District of Ohio action to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings. Medco Health Solutions, Inc., supports inclusion of the Western District of Kentucky action in which it is a defendant in MDL-1657.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending or anticipated motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

Some opposing plaintiffs and the health care defendants argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single

\* Judges Hodges and Motz took no part in the decision of this matter.

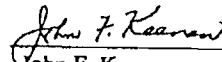
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judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *See In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L.*, 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

  
John F. Keenan  
Acting Chairman

## SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability LitigationEDLA  
SEC. L/3Middle District of Alabama*Michael D. May v. Merck & Co., Inc., et al.*, C.A. No. 3:05-998 06-1889Eastern District of California

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*Clayton Welch v. Merck & Co., Inc., et al.*, C.A. No. 2:05-2267 06-1892

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*Charles Axworthy, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-4646 06-1893  
*Luisa Greer, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-4657 06-1894

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*Barbara Allen, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-841 06-1897  
*Barbara Beyer v. Merck & Co., Inc., et al.*, C.A. No. 3:05-865 06-1898

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*Brenda Sparks, et al. v. Merck & Co., Inc.*, C.A. No. 0:05-201 06-1899  
*Kenneth Michael Short, et al. v. Merck & Co., Inc.*, C.A. No. 5:05-426 06-1900  
*Lawrence K. Butcher v. Merck & Co., Inc.*, C.A. No. 6:05-570 06-1901  
*Jerry Anderson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 6:05-573 06-1902  
*John Mullins, et al. v. Merck & Co., Inc.*, C.A. No. 6:05-586 06-1903  
*Juanetta Bush, et al. v. Merck & Co., Inc., et al.*, C.A. No. 6:05-587 06-1904

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*Debra Humburg, et al. v. Merck & Co., Inc., et al.*, C.A. No. 1:05-173 06-1905  
*James L. Bragg, Jr., etc. v. Merck & Co., Inc., et al.*, C.A. No. 1:05-175 06-1906  
*Riley Wells v. Merck & Co., Inc., et al.*, C.A. No. 1:05-177 06-1907  
*Patricia Oakes, etc. v. Merck & Co., Inc., et al.*, C.A. No. 1:05-178 06-1908  
*Dorothy Payne, etc. v. Merck & Co., Inc., et al.*, C.A. No. 1:05-179 06-1909  
*Ethel Wolf v. Merck & Co., Inc., et al.*, C.A. No. 1:05-180 06-1910

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<i>Randall Pyles, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 1:05-186	06-1912
<i>Thelma Jean Phillips, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 1:05-200	06-1913
<i>Carey L. Mynhier, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-633	06-1914
<i>William Clayton, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-637	06-1915
<i>Charles Schultise v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-638	06-1916
<i>Margaret Vandivier v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-639	06-1917
<i>Mary E. Lester v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-640	06-1918
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<i>Richard W. Allen, Sr., et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-643	06-1920
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<i>Jeffrey Joyce v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-645	06-1922
<i>James A. Daniels et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-651	06-1923
<i>Lawrence Shepherd, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-652	06-1924
<i>Pamela Winters, etc. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-654	06-1925
<i>Jennifer M. Popp, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-655	06-1926
<i>Isabella B. Cummings, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-657	06-1927
<i>Fleam Leach v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-660	06-1928
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<i>Barbara Keeling v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-662	06-1930
<i>Marlynn Fox, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-663	06-1931
<i>Sue R. Gardner, etc. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-664	06-1932
<i>Tina Day v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-665	06-1933
<i>Hazel McKee, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-666	06-1934
<i>Olando Simpson, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-667	06-1935
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<i>Susan Walker, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-670	06-1937
<i>Daniel Ryan v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-671	06-1938
<i>Sharon Schafer, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-672	06-1939
<i>Joan Anne Schwartz, etc. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-673	06-1940
<i>Perry Schneider, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-674	06-1941
<i>Mary Louise Schmidt, etc. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-675	06-1942
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<i>David G. Thomas v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-677	06-1944
<i>A. Walter Tyson, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-678	06-1945
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<i>Onna James, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-684	06-1948
<i>Garlin Cupp, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-686	06-1949
<i>Martha Sue Taylor v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-692	06-1950
<i>Sarah E. Nichols, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-693	06-1951
<i>William Mohon, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-694	06-1952
<i>Scarlett Macy, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-695	06-1953

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<i>Shannon M. Age, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-696	06-1954
<i>Faye Byers, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-711	06-1955
<i>Dora Gorman, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-712	06-1956
<i>Cleo D. Gilbert, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-713	06-1957
<i>Lorenia Henson, etc. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-714	06-1958
<i>Darrell G. Moore, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-715	06-1959
<i>Billy Joe Logsdon, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-717	06-1960
<i>Kathryn O'Neill v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-718	06-1961
<i>Paul E. Mangeot, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-719	06-1962
<i>Millard T. Shepherd v. Merck &amp; Co., Inc.,</i> C.A. No. 3:05-724	06-1963
<i>Luther B. Yount, Jr., et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-729	06-1964
<i>Ellen Rittenhouse, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 3:05-731	06-1965
<i>Ola Nelson v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 5:05-206	06-1966
<i>Michael E. Wilson v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 5:05-210	06-1967
<i>Wanda Sue Parker, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 5:05-212	06-1968

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<i>Alerne Schwent, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1745	06-1969
<i>James Coleman v. Merck &amp; Co., Inc.,</i> C.A. No. 4:05-1944	06-1970
<i>Robert Ruzicka, et al. v. Merck &amp; Co., Inc.,</i> C.A. No. 4:05-1945	06-1971
<i>Thelma Zimmerman, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1955	06-1972
<i>Samella Butler, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1956	06-1973
<i>Steve Pickard, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1969	06-1974
<i>Marsha Maxwell, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1970	06-1975
<i>Roy Lacey, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1977	06-1976
<i>Brian Lawson, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-2046	06-1977
<i>Joy Cora v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-2225	06-1978

Western District of Missouri

<i>John Webster, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 4:05-1035	06-1985
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Southern District of New York

<i>Jose Rivera, etc. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 1:05-9383	06-1986
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Northern District of Ohio

<i>William Jeffries, et al. v. Merck &amp; Co., Inc., et al.,</i> C.A. No. 1:05-2547	06-1987
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- A4 -

Eastern District of Tennessee

*James E. Queen, et al. v. Merck & Co., Inc., et al.*, C.A. No. 1:05-306

06-1988

Middle District of Tennessee

*Ruth Faulkner, etc. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-1006

06-1989

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

APR 13 2006

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DOCKET NOS. 1657 & 1699

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**  
**IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS**  
**LIABILITY LITIGATION**  
**IN RE BEXTRA AND CELEBREX MARKETING, SALES PRACTICES AND**  
**PRODUCTS LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES,\* CHAIRMAN, JOHN F. KEENAN, D.**  
**LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,**  
**KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

**ORDER OF TRANSFER WITH SIMULTANEOUS**  
**SEPARATION, REMAND AND TRANSFER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 41 actions listed on Schedule A to vacate the Panel's orders conditionally i) transferring these actions involving the prescription medication Vioxx (manufactured by Merck & Co., Inc. (Merck)) to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in MDL-1657; ii) simultaneously separating and remanding claims in these actions relating to prescription medications Bextra and Celebrex (manufactured by Pfizer Inc. (Pfizer)) to their respective transferor districts; and iii) transferring the resulting Bextra/Celebrex actions to the Northern District of California for inclusion in MDL-1699 pretrial proceedings. Defendants Pfizer, Pharmacia Corp., G.D. Searle LLC and Merck oppose these motions and urge effectuation of the Panel's orders.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with i) actions in MDL-1657 previously transferred to the Eastern District of Louisiana, and ii) actions in MDL-1699 similarly centralized in the Northern District of California. The Panel further finds that transfer for inclusion in the coordinated or consolidated pretrial proceedings in those two districts will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Transfer is also appropriate for reasons expressed by the Panel in its original orders directing centralization in these two dockets. In MDL-1657, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 P.Supp.2d 1352 (J.P.M.L. 2005). Likewise, the Panel held that the Northern District of California was a proper Section 1407 forum for actions relating to Bextra and/or Celebrex. See *In re Bextra and Celebrex Marketing, Sales Practices and Products*

\* Judges Hodges and Motz took no part in the decision of this matter.

MD00031407

MD00031407

- 2 -

*Liability Litigation*, 391 F.Supp.2d 1377 (J.P.M.L. 2005). Pending motions to remand these actions to state court can, in appropriate parts, be presented to and decided by each of the transferor courts. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

Some opposing plaintiffs argue that separation and transfer of these claims for inclusion in MDL-1657 and MDL-1699 will foster inefficiency and inconsistency and/or disrupt ongoing related state court proceedings. We are unpersuaded by these arguments. See *In re Vioxx Marketing, Sales Practices and Products Liability Litigation/In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation*, \_\_\_ F.Supp.2d \_\_\_, 2006 WL 461029 (J.P.M.L. Feb. 15, 2006).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in MDL-1657 - *In re Vioxx Marketing, Sales Practices and Products Liability Litigation*. The claims relating to Pfizer's Bextra and Celebrex prescription medications are separated and remanded, pursuant to 28 U.S.C. § 1407(a), to their respective transferor courts.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1407, the resulting actions involving claims relating to Bextra and Celebrex are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Charles R. Breyer for inclusion in the coordinated or consolidated pretrial proceedings occurring there in MDL-1699 - *In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation*.

FOR THE PANEL:

*John F. Keenan*  
John F. Keenan  
Acting Chairman

MDDC31408

M008D31990

Schedule A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability Litigation  
MDL-1699 -- In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation

Eastern District of California

*Barbara Hacker v. Merck & Co., Inc., et al.*, C.A. No. 2:05-2193  
*Christopher Leeson v. Merck & Co., Inc., et al.*, C.A. No. 2:05-2240

Western District of Kentucky

*Rhoda Overstreet v. Merck & Co., Inc., et al.*, C.A. No. 3:05-561  
*Randall R. Jackson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-562  
*Bonnie Mullins, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-577  
*Ernest D. Weber, Jr., et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-623  
*Robert Manley, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-656  
*Harold Thomas, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-669  
*Joan O'Bryan, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-681  
*Doyle A. Coen, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-682  
*Johnnie Anderson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-685  
*Galen Noe, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-700  
*Cathy Groce Stearns, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-710  
*Natella Kaye Cox v. Merck & Co., Inc., et al.*, C.A. No. 3:05-716  
*Robert Sampson v. Merck & Co., Inc., et al.*, C.A. No. 3:05-722  
*Douglas Adams, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-723

Eastern District of Missouri

*Lonnie Case v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1562  
*Jessie Abbou v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1563  
*Bertha Armistead v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1564  
*Berlin Jenkerson v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1565  
*David Wagner v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1590  
*John Kaczmarczyk v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1592  
*Jerry M. Dance v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1666  
*Doris Crenshaw v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1669  
*Jeanette Lasky v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1741  
*Francesca A. Salmieri v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1744  
*Vincent Calamia v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1746  
*Thomas Kasper v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1747  
*Bernadean Acreman v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1748  
*Josephine Tourville v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1750  
*Jacqueline M. Lawrence v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1751  
*Adele Anthon v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1752  
*James B. Elgin, Jr. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1753

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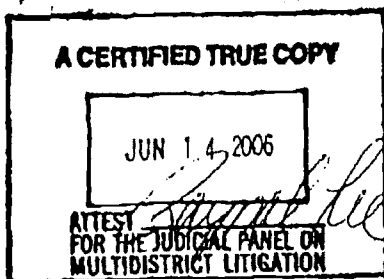
- A2 -

Eastern District of Missouri (Continued)

*Richard Menzel v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1755  
*Marcy A. West v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1756  
*Hilda L. Tucker v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1757  
*Artie Stephens v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1758  
*Shirley Adams, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1947  
*Marie Nobles, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-2040  
*Bernadette Dryer, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-2043  
*Jean Davis, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-2076

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JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATIONLORETTA G. WHYTE  
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JUN 14 2006

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DOCKET NO. 1657

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION****BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL****TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 25 actions to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

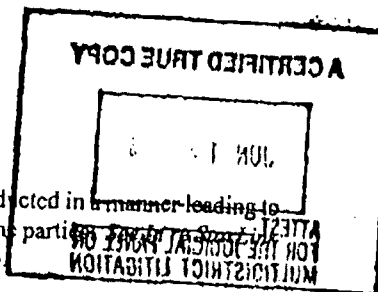
Some opposing plaintiffs argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969,

\* Judge Motz took no part in the decision of this matter.

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- 2 -

974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001).



IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

Wm. Terrell Hodges  
Chairman

## SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability LitigationEDLA  
SEC. L/3Southern District of Alabama*Robert Shawn Roach, et al. v. Merck & Co., et al.*, C.A. No. 1:06-44

06-3131

District of Alaska*State of Alaska v. Merck & Co., Inc.*, C.A. No. 3:06-18

06-3132

Eastern District of California*Boyd Cole, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-2609

06-3133

*Jill Desart v. Merck & Co., Inc., et al.*, C.A. No. 2:06-62

06-3134

Northern District of California*Trey Ditlevsen v. Merck & Co., Inc., et al.*, C.A. No. 3:05-5158

06-3135

Southern District of Illinois*Peggie Craig, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-823

06-3136

*Irene Anzona v. Merck & Co., Inc., et al.*, C.A. No. 3:05-884

06-3137

*Willis Fuller, et al. v. Merck & Co., Inc.*, C.A. No. 3:06-63

06-3138

*Robert Paskero v. Merck & Co., Inc., et al.*, C.A. No. 3:06-64

06-3139

*Eugene Perry, et al. v. Merck & Co., Inc.*, C.A. No. 3:06-65

06-3140

*Maria Kopes, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:06-154

06-3141

*Kevin Keeney, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:06-158

06-3142

*Shirley Johnson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:06-162

06-3143

Eastern District of Missouri*Diana Larrabee v. Merck & Co., Inc., et al.*, C.A. No. 4:05-1740

06-3144

Western District of Missouri*Helen G. Sarle, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:06-40

06-3145

Western District of New York*Kathleen Campbell v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6740

06-3146

*Gergory Paterniti v. Merck & Co., Inc., et al.*, C.A. No. 6:06-6065

06-3147

*George Adams v. Merck & Co., Inc., et al.*, C.A. No. 6:06-6066

06-3148

*Deborah Siroka v. Merck & Co., Inc., et al.*, C.A. No. 6:06-6068

06-3149

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EDLA  
SEC. L/3

*Bruce Stenzel v. Merck & Co., Inc., et al.*, C.A. No. 6:06-6069  
*Eugenia B. Lukasik, etc. v. Merck & Co., Inc., et al.*, C.A. No. 6:06-6075

06-3150  
06-3151

Eastern District of Pennsylvania

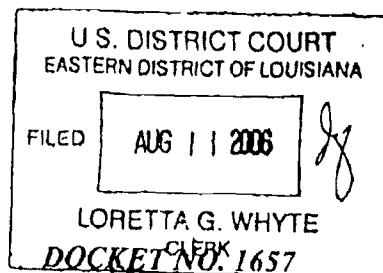
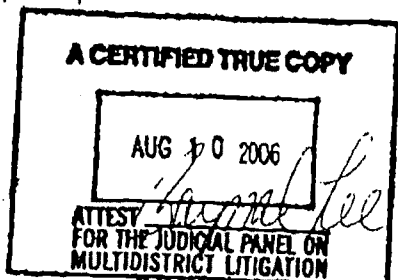
*Robbie Tallas, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-388  
*Robbie Tallas, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-389

06-3152  
06-3153

Southern District of Texas

*H.G. Pool, et al. v. Merck & Co., Inc., et al.*, C.A. No. 5:06-35  
*Robert L. Williams, etc. v. Merck & Co., Inc.*, C.A. No. 4:05-4265

06-3154  
06-3155

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

AUG 10 2006

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATIONEDLA  
SEC. 1/3

<i>Amanda Pritchett v. Merck &amp; Co., Inc., et al.</i> , S.D. Alabama, C.A. No. 2:06-122	06-4295
<i>Rebecca Moore, et al. v. Merck &amp; Co., Inc.</i> , N.D. Illinois, C.A. No. 1:06-1354	06-4296
<i>Mary L. Harper, et al. v. Merck &amp; Co., Inc.</i> , W.D. Kentucky, C.A. No. 3:05-604	06-4297
<i>Jacqueline Fuqua v. Merck &amp; Co., Inc., et al.</i> , N.D. Mississippi, C.A. No. 2:06-63	06-4298
<i>Randy Robinson v. Merck &amp; Co., Inc., et al.</i> , N.D. Mississippi, C.A. No. 2:06-64	06-4299
<i>Owen Kittle v. Merck &amp; Co., Inc., et al.</i> , N.D. Mississippi, C.A. No. 2:06-65	06-4300
<i>Ginger Pope v. Merck &amp; Co., Inc., et al.</i> , N.D. Mississippi, C.A. No. 2:06-66	06-4301
<i>State of Montana, et al. v. Merck &amp; Co., Inc.</i> , D. Montana, C.A. No. 6:06-7	06-4302

BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.  
FREDERICK MOTZ,\* ROBERT L. MILLER, JR., KATHRYN H. VRATIL  
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL

## TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in eight actions to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Defendant Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

\* Judge Motz took no part in the decision of this matter.

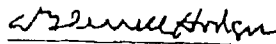
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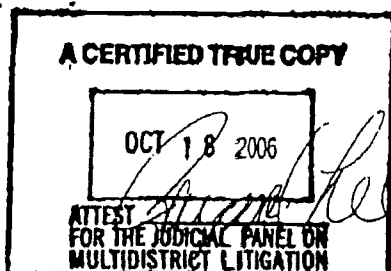
Some opposing plaintiffs argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1857 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. See *In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman



JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
OCT 18 2006

DOCKET NO. 1657  
2006 NOV -2- AM 11:39  
FILED  
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LORETTA G. WHYTE  
CLERK

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION**

EDLA  
SEC. L/3

<i>Felix Arrington, et al. v. Merck &amp; Co., Inc., et al., M.D. Alabama, C.A. No. 2:06-488</i>	06-9328
<i>Rosemary Leverett, etc. v. Merck &amp; Co., Inc., et al., M.D. Alabama, C.A. No. 3:06-476</i>	06-9329
<i>Milton Elliot v. Merck &amp; Co., Inc., et al., S.D. Florida, C.A. No. 9:06-80545</i>	06-9330
<i>Coy Nunn, et al. v. Merck &amp; Co., Inc., et al., S.D. Illinois, C.A. No. 3:06-430</i>	06-9331
<i>Ruthie Young, et al. v. Merck &amp; Co., Inc., et al., S.D. Illinois, C.A. No. 3:06-462</i>	06-9332
<i>Norman Mahan v. Merck &amp; Co., Inc., et al., N.D. Mississippi, C.A. No. 2:06-62</i>	06-9333
<i>Larry Williams v. Merck &amp; Co., Inc., et al., N.D. Mississippi, C.A. No. 4:06-60</i>	06-9334
<i>Joyce Calloway, et al. v. Merck &amp; Co., Inc., S.D. Texas, C.A. No. 4:06-1772</i>	06-9335
<i>State of Utah v. Merck &amp; Co., Inc., D. Utah, C.A. No. 2:06-406</i>	06-9336

**BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.  
FREDERICK MOTZ,\* ROBERT L. MILLER, JR., KATHRYN H. VRATIL  
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in these actions to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Defendant Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360

\* Judge Motz took no part in the decision of this matter.

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F.Supp.2d 1352 (J.P.M.L. 2005).

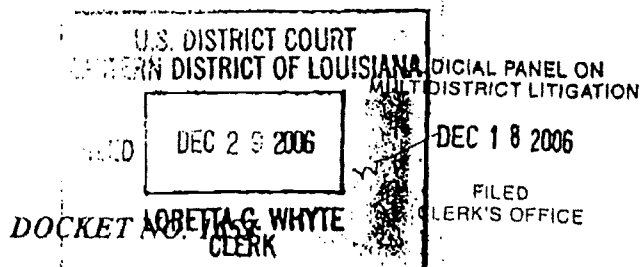
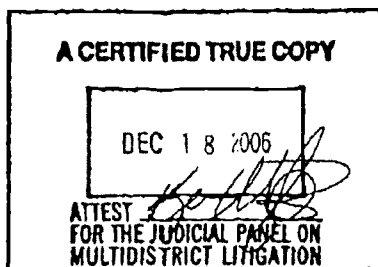
The *Utah* plaintiff argues that the presence of questions of fact relating to Utah's Medicaid program as well as unique causes of action under Utah law counsel against inclusion of this action in MDL-1657 proceedings. We are unpersuaded by this argument. Regardless of any differences in legal theory, *Utah* and the actions in the transferee district arise from representations about the safety of Vioxx. Inclusion of *Utah* in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. See *In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman



**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION** EDLA  
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<i>Rosie Russaw, etc. v. Merck &amp; Co., Inc., et al.</i> , M.D. Alabama, C.A. No. 2:06-557	06-11435
<i>Betty Whitehead, etc. v. Merck &amp; Co., Inc., et al.</i> , N.D. Alabama, C.A. No. 2:06-1279	06-11436
<i>Edward Schwartz v. Merck &amp; Co., Inc., et al.</i> , N.D. California, C.A. No. 3:06-4180	06-11437
<i>Patrick E. Murphy v. Merck &amp; Co., Inc., et al.</i> , N.D. California, C.A. No. 4:06-4794	06-11438
<i>Anita Davis v. Merck &amp; Co., Inc., et al.</i> , N.D. Florida, C.A. No. 4:06-356	06-11439
<i>Barbara Heet, et al. v. Merck &amp; Co., Inc., et al.</i> , S.D. Illinois, C.A. No. 3:06-514	06-11440
<i>Vivian Copher, et al. v. Merck &amp; Co., Inc., et al.</i> , E.D. Missouri, C.A. No. 4:06-1185	06-11441
<i>Inez Kincaid, et al. v. Merck &amp; Co., Inc., et al.</i> , E.D. Missouri, C.A. No. 4:06-1186	06-11442
<i>Richard Helton, et al. v. Merck &amp; Co., Inc., et al.</i> , E.D. Missouri, C.A. No. 4:06-1187	06-11443
<i>Minnie Smith, et al. v. Merck &amp; Co., Inc., et al.</i> , E.D. Missouri, C.A. No. 4:06-1196	06-11444
<i>John James Mangani v. Merck &amp; Co., Inc., et al.</i> , D. Nevada, C.A. No. 2:06-914	06-11445
<i>Kathie Bartlett, et al. v. Merck &amp; Co., Inc., et al.</i> , D. Nevada, C.A. No. 3:06-359	06-11446

**BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.  
FREDERICK MOTZ,\* ROBERT L. MILLER, JR., KATHRYN H. VRATIL,  
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in these actions to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Defendant Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons

\* Judge Motz took no part in the decision of this matter.

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expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

<b>A CERTIFIED TRUE COPY</b> <div style="border: 1px solid black; padding: 5px; text-align: center;">FEB - 8 2007</div> ATTEST FOR THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION	U.S. DISTRICT COURT EASTERN DISTRICT OF LOUISIANA FILED FEB - 8 2007 LORETTA G. WHYTE DOCKET CLERK 657	JUDICIAL PANEL ON MULTIDISTRICT LITIGATION FEB - 8 2007 FILED CLERK'S OFFICE
	BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION	

**IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES,\* CHAIRMAN, D. LOWELL JENSEN,\* J.  
FREDERICK MOTZ,\* ROBERT L. MILLER, JR., KATHRYN H. VRATIL,  
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in most actions and the health care provider defendants in the two Oklahoma actions to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Defendant Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

Some plaintiffs and the opposing health care provider defendants argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976); and 2) ensures that pretrial proceedings will be conducted in a manner leading to

\* Judges Hodges, Jensen and Motz took no part in the decision of this matter.

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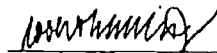
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the just and expeditious resolution of all actions to the overall benefit of the parties. The MDL-1657 transferee court can employ any number of pretrial techniques – such as establishing separate discovery and/or motion tracks – to efficiently manage this litigation. In any event, we leave the extent and manner of coordination or consolidation of these actions to the discretion of the transferee court. *In re Mutual Funds Investment Litigation*, 310 F.Supp.2d 1359 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. But we are unwilling, on the basis of the record before us, to make such a determination at this time. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38. We are confident in the transferee judge's ability to streamline pretrial proceedings in these actions, while concomitantly directing the appropriate resolution of all claims.

Some *pro se* plaintiffs argue that they will be unable to pursue their claims in MDL-1657. Judge Fallon has, however, emphasized the obligation of the court and counsel to assist *pro se* plaintiffs in their participation in MDL-1657 proceedings. If discovery sought by a particular plaintiff is deemed to be outside the scope of MDL-1657's common discovery, this plaintiff's discovery can nevertheless be pursued concurrently within the MDL-1657 framework.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Robert L. Miller, Jr.  
Acting Chairman

## SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability LitigationEastern District of California

<i>Gladys Herring, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1826	EDLA 07-742
<i>Ruth Beatty v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1845	EDLA 07-743
<i>Mary Grove v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1941	EDLA 07-744
<i>Donna Moret v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1954	EDLA 07-745
<i>Maximo Rivera v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1957	EDLA 07-746
<i>Linda Chamberlain v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1973	EDLA 07-747
<i>Kap Sook Choi v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1977	EDLA 07-748
<i>Wilold Kolankowski v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1978	EDLA 07-749
<i>Freeman Herring v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-2079	EDLA 07-750
<i>Emma Miguel v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-2215	EDLA 07-751

Northern District of California

<i>Jeffrey Kaufman, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-4921	EDLA 07-752
<i>William C. Mullins v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-5534	EDLA 07-753

Southern District of California

<i>Earl Alger v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1888	EDLA 07-754
<i>Douglas Diaz v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1889	EDLA 07-755
<i>Raylene Diaz v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1890	EDLA 07-756
<i>Diane Dumas v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1891	EDLA 07-757
<i>Judy Joseph v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1892	EDLA 07-758
<i>Debra Robles v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1893	EDLA 07-759
<i>Berit Nynzen v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1894	EDLA 07-760
<i>Annette Williams v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1896	EDLA 07-761
<i>Jayn Fields v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1897	EDLA 07-762
<i>Brenda Eldridge v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1898	EDLA 07-763
<i>William Eldridge v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1899	EDLA 07-764
<i>David Fields v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1900	EDLA 07-765
<i>Diane Cross v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1901	EDLA 07-766
<i>Valada Embry v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1903	EDLA 07-767

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## MDL-1657 Schedule A (Continued)

Southern District of California (Continued)

<i>Wanda Alger v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1904	EDLA 07-768
<i>David Young, Sr. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1905	EDLA 07-769
<i>George Dumas v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1906	EDLA 07-770
<i>Carol Demasters v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1907	EDLA 07-771
<i>Helen Eads v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1908	EDLA 07-772
<i>Irma Young v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1909	EDLA 07-773
<i>Evelyn Mazzone v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1951	EDLA 07-774
<i>Jacqueline Battle v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1953	EDLA 07-775
<i>Robert Battle v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1954	EDLA 07-776
<i>James Mazzone v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1955	EDLA 07-777
<i>Norwood Blatchford v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1956	EDLA 07-778
<i>Margaret Choate v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1957	EDLA 07-779
<i>Rosa Blatchford v. Merck &amp; Co., et al.</i> , C.A. No. 3:06-1958	EDLA 07-780
<i>Horst Baranasch v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1959	EDLA 07-781
<i>Carol J. Heck v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1960	EDLA 07-782
<i>Esperanza Juarez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1961	EDLA 07-783
<i>Jesus Beato v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1962	EDLA 07-784
<i>Alice Farmer v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1963	EDLA 07-785
<i>Susanne Barabasch v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1964	EDLA 07-786
<i>Nina Pope v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1966	EDLA 07-787
<i>Carmen Ramirez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1967	EDLA 07-788
<i>Nancy Furman v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1968	EDLA 07-789
<i>Jean Brooker v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1969	EDLA 07-790
<i>Stephen Choate v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1970	EDLA 07-791
<i>Glenna Settle v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1971	EDLA 07-792
<i>Frederick Settle v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1972	EDLA 07-793
<i>Richard Brooker v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1973	EDLA 07-794
<i>Alicia Beato v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1981	EDLA 07-795
<i>Joel Christenson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1982	EDLA 07-796
<i>Tina Diamond v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1983	EDLA 07-797
<i>Loren Diamond v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1984	EDLA 07-798
<i>Edward Gnau v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1985	EDLA 07-799
<i>Srville Harris v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1986	EDLA 07-800
<i>Victoria Kassab v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1987	EDLA 07-801

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## MDL-1657 Schedule A (Continued)

Southern District of California (Continued)

<i>William Kay v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1988	EDLA 07-802
<i>Hank Martinex v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1989	EDLA 07-803
<i>Simena Woo v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1990	EDLA 07-804
<i>Priscilla Wilson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1991	EDLA 07-805
<i>Bobby Wilson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1992	EDLA 07-806
<i>Leslie Weldy v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1993	EDLA 07-807
<i>Mary Stromberg v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1994	EDLA 07-808
<i>Leona St. Onge v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1995	EDLA 07-809
<i>Eloisa Santillan v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1996	EDLA 07-810
<i>Betty Michal v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1997	EDLA 07-811
<i>Minh Tam Nguyen v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1998	EDLA 07-812
<i>Lou Ella Holmes v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-1999	EDLA 07-813
<i>Betty Jo Kay v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2000	EDLA 07-814
<i>Dearded Knotts v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2001	EDLA 07-815
<i>Joanne Westover v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2003	EDLA 07-816
<i>Stanley Westover v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2004	EDLA 07-817
<i>Sharon Leezy v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2005	EDLA 07-818
<i>Carl Danek v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2006	EDLA 07-819
<i>Lorraine Suder v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2007	EDLA 07-820
<i>Mariane Power v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2008	EDLA 07-821
<i>Louis Roah v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2009	EDLA 07-822
<i>Dorothy Scott v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2010	EDLA 07-823
<i>James Leezy v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2011	EDLA 07-824
<i>Angela Tourajlgian v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2012	EDLA 07-825
<i>Arnold Suder v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2013	EDLA 07-826
<i>Jean Roah v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2014	EDLA 07-827
<i>Charles Murphy v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2015	EDLA 07-828
<i>Carlos Baylon v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2016	EDLA 07-829
<i>Debbie Clines v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2017	EDLA 07-830
<i>Juan Leanos v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2018	EDLA 07-831
<i>Michelle Bell v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2019	EDLA 07-832
<i>Robert Brown v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2020	EDLA 07-833
<i>Josephine Baylon v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2021	EDLA 07-834
<i>Kim Hernandez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2032	EDLA 07-835

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## MDL-1657 Schedule A (Continued)

Southern District of California (Continued)

<i>Judith Schuff v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2033	EDLA 07-836
<i>Jeff Goldberg v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2034	EDLA 07-837
<i>Larry Dawes v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2035	EDLA 07-838
<i>Phyllis Cruz v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2036	EDLA 07-839
<i>Jose Cruz v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2037	EDLA 07-840
<i>David J. Hernandez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2038	EDLA 07-841
<i>Martha Brault v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2039	EDLA 07-842
<i>Inez Goldenberg v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2040	EDLA 07-843
<i>Evelyn Green v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2041	EDLA 07-844
<i>Anita Kincade v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2042	EDLA 07-845
<i>Catherine Janes v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2043	EDLA 07-846
<i>Alfred Brault v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2044	EDLA 07-847
<i>Harold James v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2045	EDLA 07-848
<i>Egon Ohlendorf v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2046	EDLA 07-849
<i>Robert Gans v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2047	EDLA 07-850
<i>Nancy Jackson-Dawes v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2048	EDLA 07-851
<i>Frances Gans v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2049	EDLA 07-852
<i>Denise Radovan-Alfonso v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2115	EDLA 07-853
<i>Francisco Silva v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2116	EDLA 07-854
<i>Marla Santiago v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2117	EDLA 07-855
<i>James Rhodes v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2118	EDLA 07-856
<i>Mark Williams v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2119	EDLA 07-857
<i>Vickie Brendel v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2120	EDLA 07-858
<i>Perseveranda Smith v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2121	EDLA 07-859
<i>Fred Black, Sr. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2122	EDLA 07-860
<i>Jean Cardinal-McQuery v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2123	EDLA 07-861
<i>Bella Jacobs v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2124	EDLA 07-862
<i>Larry Valenti v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2125	EDLA 07-863
<i>Patricia Martinez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2126	EDLA 07-864
<i>Patricia May Hilliard v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2127	EDLA 07-865
<i>Jan Schmidt v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2128	EDLA 07-866
<i>Steven Hampton v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2129	EDLA 07-867
<i>Jean McNeese v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2130	EDLA 07-868
<i>Dale Lloyd v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2131	EDLA 07-869

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## MDL-1657 Schedule A (Continued)

Southern District of California (Continued)

<i>Augustin Hernandez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2132	EDLA 07-870
<i>Kenneth Lowry v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2133	EDLA 07-871
<i>Donna Hall v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2134	EDLA 07-872
<i>Jacqueline Lowry v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2135	EDLA 07-873
<i>Dolores Lloyd v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2136	EDLA 07-874
<i>Brian Colt v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2137	EDLA 07-875
<i>Juan Silva v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2138	EDLA 07-876
<i>Frances Bushong v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2139	EDLA 07-877
<i>Marta Osuna v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2152	EDLA 07-878
<i>Thomas Perfetto v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2153	EDLA 07-879
<i>Randy Valentine v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2154	EDLA 07-880
<i>Andres De Casas v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2155	EDLA 07-881
<i>Anna Combite v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2156	EDLA 07-882
<i>S. Anne Hamilton v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2157	EDLA 07-883
<i>Aloysius Kremer v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2158	EDLA 07-884
<i>Winifred Morris v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2159	EDLA 07-885
<i>Darnell Hudson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2160	EDLA 07-886
<i>Viola Kremer v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2161	EDLA 07-887
<i>Marietta Orpilla v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2163	EDLA 07-888
<i>Joyce Perfetto v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2164	EDLA 07-889
<i>Amineh Younis v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2165	EDLA 07-890
<i>Ahmad Younis v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2166	EDLA 07-891
<i>Michelle McMahon v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2259	EDLA 07-892
<i>Darren McMahon v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2260	EDLA 07-893

Middle District of Florida

<i>Louise M. Griffin, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 8:06-1806	EDLA 07-894
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District of Hawaii

<i>John R. McClelland, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-543	EDLA 07-895
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## MDL-1657 Schedule A (Continued)

Western District of Kentucky

*Cynthia Chesser, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:06-521 EDLA 07-896

Northern District of Mississippi

*Michael A. Collier v. Merck & Co., Inc., et al.*, C.A. No. 1:06-265 EDLA 07-897

Eastern District of Missouri

*Stephen D. Murch v. Merck & Co., Inc., et al.*, C.A. No. 4:06-1157 EDLA 07-898  
*Forrest Lincoln, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:06-1372 EDLA 07-899

District of Nevada

*Albertine Avant, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-1313 EDLA 07-900  
*Buddy Batiz, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-1317 EDLA 07-901  
*Don Chapman, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-1319 EDLA 07-902  
*Norma Coon, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-1320 EDLA 07-903  
*Ralph Cox, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:06-1323 EDLA 07-904

Northern District of New York

*Dennis Richard Harrison v. Merck & Co., Inc.*, C.A. No. 1:06-932 EDLA 07-905

Southern District of New York

*Elena Strujan v. Merck & Co., Inc.*, C.A. No. 1:06-7745 EDLA 07-906

Eastern District of North Carolina

*Eugene Seals, et al. v. Merck & Co., Inc., et al.*, C.A. No. 7:06-115 EDLA 07-907

Northern District of Oklahoma

*Wanda Ferrell, etc. v. Merck & Co., Inc., et al.*, C.A. No. 4:06-561 EDLA 07-908

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## MDL-1657 Schedule A (Continued)

Western District of Oklahoma

*Stella Claypool v. Merck & Co., Inc., et al.*, C.A. No. 5:06-1030 EDLA 07-909

Eastern District of Texas

*Elton White, et al. v. Merck & Co., Inc., et al.*, C.A. No. 1:06-638 EDLA 07-910

Northern District of Texas

*Rose Fogiel v. Merck & Co., Inc., et al.*, C.A. No. 3:06-1748 EDLA 07-911

Southern District of Texas

<i>Domínguez R. Castro v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-150	EDLA 07-912
<i>Patricia Hernandez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-151	EDLA 07-913
<i>Olivia Robinson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-152	EDLA 07-914
<i>Gwendolyn Ann Herron, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-163	EDLA 07-915
<i>Blanca D. Jimenez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-165	EDLA 07-916
<i>Veronica Zamora v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-171	EDLA 07-917
<i>Ben Lorigoria v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-174	EDLA 07-918
<i>Celia M. Sanchez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-175	EDLA 07-919
<i>Delia Cantu, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-404	EDLA 07-920
<i>Lucia Gonzalez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-424	EDLA 07-921
<i>Minerva H. Rosas v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-427	EDLA 07-922
<i>Alison Nettles, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:06-3191	EDLA 07-923
<i>Edward M. Steele v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 5:06-147	EDLA 07-924
<i>Noemi Guzman Mata v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-253	EDLA 07-925
<i>Maria Dolores Herrera, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-255	EDLA 07-926
<i>Estela Guerra, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-261	EDLA 07-927
<i>Cristina Hernandez Mendoza v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-262	EDLA 07-928
<i>Hortencia Rosalez v. Amerisource, Inc., et al.</i> , C.A. No. 7:06-269	EDLA 07-929
<i>Maria Gonzalez de Ramirez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-278	EDLA 07-930
<i>Martha B. Torres v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-279	EDLA 07-931

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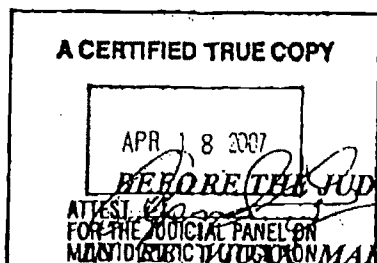
## MDL-1657 Schedule A (Continued)

Southern District of Texas (Continued)

<i>Petra Ybarra v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-288	EDLA 07-932
<i>Luis Cantu v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-289	EDLA 07-933
<i>Emma Cuellar v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-295	EDLA 07-934
<i>Maria C. Cardenas v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-296	EDLA 07-935
<i>Glorta Mascorro v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-297	EDLA 07-936
<i>Maria Gloria Ybarra v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-308	EDLA 07-937
<i>Aida Vasquez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-311	EDLA 07-938
<i>Irma Solis v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-312	EDLA 07-939
<i>Francisca Villarreal v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-315	EDLA 07-940
<i>Elma Martinez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-316	EDLA 07-941
<i>Elvira Serna v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 7:06-317	EDLA 07-942

Western District of Texas

<i>Ronnie D. Fox, etc. v. Merck &amp; Co., Inc.</i> , C.A. No. 1:06-748	EDLA 07-943
<i>Barbara J. Baxter v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-749	EDLA 07-944
<i>Katherine Arney, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-771	EDLA 07-945
<i>Eddie Roy Tealer v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-772	EDLA 07-946
<i>Ramona Wright v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-779	EDLA 07-947
<i>Jesus Avila v. Merck &amp; Co., Inc.</i> , C.A. No. 1:06-786	EDLA 07-948
<i>Ina M. Teller v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-804	EDLA 07-949
<i>Jonna Murchison v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-805	EDLA 07-950
<i>Brian G. Thompson v. Merck &amp; Co., Inc., et al.</i> , G.A. No. 1:06-806	EDLA 07-951
<i>Juanita Phillips v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-827	EDLA 07-952
<i>James Townsley v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-849	EDLA 07-953
<i>Richard Rodriguez, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 5:06-785	EDLA 07-954



**U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

FILED

APR 18 2007

DOCKET NO. 1657

LORETTA G. WHYTE  
CLERK

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

APR 18 2007

FILED  
CLERK'S OFFICE

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**  
**MARKETING, SALES PRACTICES AND PRODUCTS**  
**LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.  
FREDERICK MOTZ,\* ROBERT L. MILLER, JR., KATHRYN H. VRATIL,  
DAVID R. HANSEN AND ANTHONY J. SCIRICA,\* JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 83 actions to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

*[Signature]*

Wm. Terrell Hodges  
Chairman

Fee \_\_\_\_\_  
Process \_\_\_\_\_  
☒ Dkt'd \_\_\_\_\_  
CtRmDep \_\_\_\_\_  
Doc. No. \_\_\_\_\_

\* Judges Motz and Scirica took no part in the decision of this matter.

## SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability LitigationEDLA  
SEC. 1/Eastern District of California

<i>Sheryl Churchman v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-2479	07-2063
<i>Irene Lear v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-2830	07-2064
<i>Allan J. English v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-2833	07-2065

Northern District of California

<i>Dolores Lee Tazmon v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-7455	07-2066
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Southern District of California

<i>Hernogenes Del Rosario v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2535	07-2067
<i>Maria Graham, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2536	07-2068
<i>Sandra Boardman, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2537	07-2069
<i>Lloyd Bell, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2538	07-2070
<i>Joseph Cornwall, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2539	07-2071
<i>Nancy Murphy v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:07-13	07-2072

District of Colorado

<i>James Franklin, etc. v. Merck &amp; Co., Inc.</i> , C.A. No. 1:06-2164	07-2073
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Southern District of Florida

<i>Kenneth Bowe, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14284	07-2074
<i>Jacob Avidon, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14285	07-2075
<i>Veronica Clark-Atchinson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14287	07-2076
<i>Robins A. Curry v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14288	07-2077
<i>Lystine Fairweather, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14289	07-2078
<i>Mary Lee Hudson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14290	07-2079
<i>Walter Smith, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14291	07-2080
<i>Warren Young, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14292	07-2081
<i>Andrew Trax, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14293	07-2082
<i>Helen Spano, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14294	07-2083
<i>John Gumas v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14295	07-2084
<i>Darrell Duncan v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14296	07-2085
<i>James Ferguson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14297	07-2086
<i>Carol Morgan v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14298	07-2087

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## MDL-1657 Schedule A (Continued)

EDLA  
SEC. L/3Southern District of Florida (Continued)

<i>Patricia C. Putman, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14299	07-2088
<i>Donald L. Simons v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14300	07-2089
<i>Donna Robinson v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-14301	07-2090
<i>Gail Simmons v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 9:06-80994	07-2091
<i>Anita Finnegan v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 9:06-80996	07-2092
<i>Joseph Iuvara, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 9:06-80997	07-2093
<i>Thomas Erling v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 9:06-80998	07-2094

Southern District of Illinois

<i>Sharon Calaway v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-870	07-2095
<i>Sandra Kay Lindsey v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-883	07-2096
<i>Steven Strader v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-896	07-2097
<i>Patricia A. Taylor v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-948	07-2098

District of Nevada

<i>Charles Fitzgerald, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1324	07-2099
<i>Calvin Maestro, M.D., et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1325	07-2100
<i>George Morris, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1326	07-2101
<i>Estate of Mary Hoffman Williams, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1327	07-2102
<i>George Mayfield, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1328	07-2103
<i>Barbara Wyman, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1329	07-2104

Southern District of New York

<i>Ali Ghanem v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-11419	07-2105
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District of South Carolina

<i>Joyce R. Sanders, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 4:06-3225	07-2106
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Southern District of Texas

<i>Juan Lizardi v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-176	07-2107
<i>Maria G. Gonzalez v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-181	07-2108
<i>San Juanita Mares Lejia, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 1:06-184	07-2109
<i>Rosario Lechuga v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-478	07-2110
<i>Divine Garcia v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-489	07-2111

- A3 -

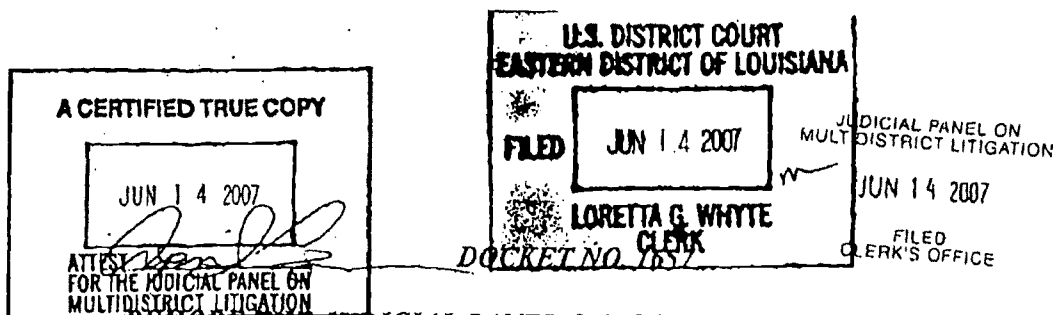
## MDL-1657 Schedule A (Continued)

EDLA  
SEC. L/3Southern District of Texas (Continued)

<i>Hortencia Garza, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 2:06-494</i>	07-2112
<i>Pedro Hernandez v. Merck &amp; Co., Inc., et al., C.A. No. 2:06-499</i>	07-2113
<i>John Blazier v. Merck &amp; Co., Inc., et al., C.A. No. 3:06-721</i>	07-2114
<i>Evert Crump v. Merck &amp; Co., Inc., et al., C.A. No. 3:06-723</i>	07-2115
<i>Richard Smith v. Merck &amp; Co., Inc., et al., C.A. No. 3:06-724</i>	07-2116
<i>Vada Tolbert v. Merck &amp; Co., Inc., et al., C.A. No. 4:06-3689</i>	07-2117
<i>Lynna J. Anderson, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 6:06-114</i>	07-2118
<i>Lillian Murphree v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-303</i>	07-2119
<i>Juan R. Gonzalez v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-319</i>	07-2120
<i>Adolfo De Leon v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-320</i>	07-2121
<i>Victor Saenz v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-321</i>	07-2122
<i>Francisca Villarreal, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-322</i>	07-2123
<i>Jose Zuniga v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-329</i>	07-2124
<i>Rodolfo Regalado v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-331</i>	07-2125
<i>Ludivina Pena v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-333</i>	07-2126
<i>Anita Salinas v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-334</i>	07-2127
<i>Alonso Rivas v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-336</i>	07-2128
<i>Dora Hernandez v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-337</i>	07-2129
<i>Julio Sierra v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-338</i>	07-2130
<i>Javier Trevino v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-340</i>	07-2131
<i>Marcelina Tijerina v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-341</i>	07-2132
<i>Maria De Leon v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-344</i>	07-2133
<i>Abdon Gonzalez v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-345</i>	07-2134
<i>Maria Quintanilla v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-346</i>	07-2135
<i>Adriana Negrete v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-347</i>	07-2136
<i>Nora De Los Rios, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 7:06-357</i>	07-2137

Western District of Texas

<i>Emil Kenneth Braune v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-848</i>	07-2138
<i>Marilyn Trent v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-858</i>	07-2139
<i>Charles Ray Garrett, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-859</i>	07-2140
<i>Shirley Ison, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-865</i>	07-2141
<i>Esther McConoghy v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-870</i>	07-2142
<i>Ruby Shaw v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-871</i>	07-2143
<i>Nathaniel Knight v. Merck &amp; Co., Inc., et al., C.A. No. 1:06-901</i>	07-2144
<i>Selma Gonzalez, et al. v. Merck &amp; Co., Inc., et al., C.A. No. 5:06-985</i>	07-2145



**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**  
**IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS**  
**LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.**  
**FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,\* KATHRYN H. VRATIL,**  
**DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL**

**TRANSFER ORDER**

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 38 actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of all actions in MDL-1657 proceedings. The treating physician and dispensing pharmacy defendants in the four West Virginia actions also favor inclusion of their actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending or anticipated motions to remand to state court or relating to the status of the action pending in the Central District of California can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

\* Judges Motz and Miller took no part in the decision of this matter.

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- 2 -

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

## SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability LitigationEDLA  
SEC. L/3Central District of California*Ruby Lois Moore Estate, etc. v. Merck & Co., Inc.*, C.A. No. 2:06-7548

07-0668

Eastern District of California

*Mosetta Bernstine v. Merck & Co., Inc., et al.*, C.A. No. 2:07-34  
*Katherine Harrison v. Merck & Co., Inc., et al.*, C.A. No. 2:07-42  
*James Daniels, Jr. v. Merck & Co., Inc., et al.*, C.A. No. 2:07-48  
*Barbara Ford-Daniels v. Merck & Co., Inc., et al.*, C.A. No. 2:07-51  
*Lynn Franklin v. Merck & Co., Inc., et al.*, C.A. No. 2:07-57  
*Irma Franklin v. Merck & Co., Inc., et al.*, C.A. No. 2:07-58  
*Carolyn Lee Wilson v. Merck & Co., Inc., et al.*, C.A. No. 2:07-61  
*Mary Ann Harris v. Merck & Co., Inc., et al.*, C.A. No. 2:07-67  
*John Wilson v. Merck & Co., Inc., et al.*, C.A. No. 2:07-68  
*Ishmael Haqq v. Merck & Co., Inc., et al.*, C.A. No. 2:07-73  
*David Tenn, etc. v. Merck & Co., Inc., et al.*, C.A. No. 2:07-75  
*Estate of Juanita Battle v. Merck & Co., Inc., et al.*, C.A. No. 2:07-77  
*Denise Denison v. Merck & Co., Inc., et al.*, C.A. No. 2:07-79

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 07-3289

Northern District of California

*Dorothy Shanks v. Merck & Co., Inc., et al.*, C.A. No. 3:07-65  
*Stanford Johnson v. Merck & Co., Inc., et al.*, C.A. No. 3:07-67  
*Estate of Robert Badke, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:07-69  
*Fred Hardin v. Merck & Co., Inc., et al.*, C.A. No. 3:07-75  
*Jeffrey Nielsen v. Merck & Co., Inc., et al.*, C.A. No. 3:07-76  
*Juliana Nielsen v. Merck & Co., Inc., et al.*, C.A. No. 3:07-77  
*Jacquelyn Johnson v. Merck & Co., Inc., et al.*, C.A. No. 3:07-78  
*Arthur Shanks v. Merck & Co., Inc., et al.*, C.A. No. 4:07-68  
*Earnestine Hardin v. Merck & Co., Inc., et al.*, C.A. No. 4:07-70  
*Shahla Jaferian v. Merck & Co., Inc., et al.*, C.A. No. 5:07-66  
*Estate of Sandra Ellis v. Merck & Co., Inc., et al.*, C.A. No. 5:07-74  
*Nader Jaferian v. Merck & Co., Inc., et al.*, C.A. No. 5:07-79  
*Randolph Dossett v. Merck & Co., Inc., et al.*, C.A. No. 5:07-80  
*Suzanne Dante v. Merck & Co., Inc., et al.*, C.A. No. 5:07-81

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EDLA  
SEC. L/3Southern District of California

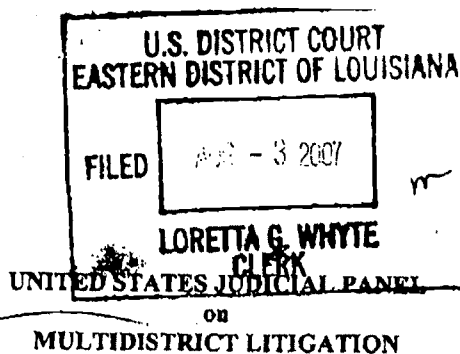
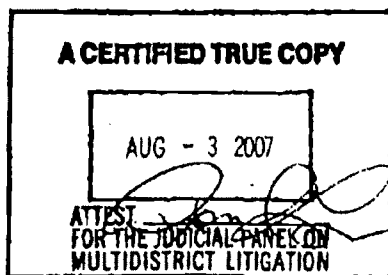
<i>Genevieve Tadman v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:06-2151	07-3304
<i>Del Rorer v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:07-10	07-3305
<i>Carol Krepp v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:07-11	07-3306
<i>Charles Krepp v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:07-12	07-3307
<i>Teresa Rorer v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:07-14	07-3308
<i>Arlene Purvis v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 3:07-15	07-3309

Northern District of West Virginia

<i>Helen Jean Anderson, etc. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 5:06-151	07-3310
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Southern District of West Virginia

<i>Paul Noe, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1004	07-3311
<i>Leota Faye Dickens v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:06-1005	07-3312
<i>Madonna Armentrout, etc. v. Rite Aid of West Virginia, Inc.</i> , C.A. No. 3:06-1058	07-3313



JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

AUG - 3 2007

FILED  
CLERK'S OFFICE

**IN RE: VIOXX MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 1657

**TRANSFER ORDER**

**Before the entire Panel:** These motions are brought pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in three actions listed on Schedule A and pending in the Central District of California, the Southern District of California and the Southern District of West Virginia, respectively. Movants ask the Panel to vacate its orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Defendant Merck & Co., Inc., favors inclusion of all actions in MDL No. 1657 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana, and that transfer of the actions to the Eastern District of Louisiana for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. The Panel further finds that transfer of these actions is appropriate for the reasons expressed by the Panel in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

Any pending motions to remand to state court can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

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\* Judges Heyburn, Motz and Scirica took no part in the disposition of this matter.

- 2 -

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



D. Lowell Jensen  
Acting Chairman

John G. Heyburn II, Chairman\*  
Robert L. Miller, Jr.  
David R. Hansen

J. Frederick Motz\*  
Kathryn H. Vratil  
Anthony J. Scirica\*

**IN RE: VIOXX MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 1657

**SCHEDULE A**

**EDLA  
SEC. L/3**

Central District of California

Michael C. Valle v. Merck & Co., Inc., C.A. No. 2:07-837

07-1620

Southern District of California

Ben Orpilla v. Merck & Co., Inc., et al., C.A. No. 3:06-2162

07-3978

Southern District of West Virginia

Donald Brumfield, et al. v. Merck & Co., Inc., C.A. No. 5:07-89

07-1407

**MDL 1657**

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

OCT 17 2007

FILED  
CLERK'S OFFICE

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: VIOXX MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION

George Williams, et al. v. Merck & Co., Inc., et al., )  
D. South Carolina, C.A. No. 2:07-1486 )  
George David Murphy v. Merck & Co., Inc., et al., )  
S.D. Florida, C.A. No. 9:07-80509 )

MDL No. 1657

TRANSFER ORDER

Before the entire Panel: Plaintiffs in these two actions move pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), asking the Panel to vacate its orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in MDL No. 1657. Defendant Merck & Co., Inc., opposes the motions.

After considering all counsel's argument, we find that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana, and that transfer of these actions to the Eastern District of Louisiana for inclusion in MDL No. 1657 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. We further find that transfer of these actions is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. See *In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

The parties can present any pending motions for remand to state court to the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

\* Judges Heyburn and Motz took no part in the disposition of this matter.

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- 2 -

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



D. Lowell Jensen  
Acting Chairman

John G. Heyburn II, Chairman\*  
Robert L. Miller, Jr.  
David R. Hansen

J. Frederick Motz\*  
Kathryn H. Vratil  
Anthony J. Scirica

A CERTIFIED TRUE COPY

ATTEST

By April Layne on Feb 11, 2008

FOR THE UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATIONU.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

FILED

FEB 11 2008

UNITED STATES JUDICIAL PANEL

LORETTA G. WHITE  
CLERKUNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

Feb 11, 2008

FILED  
CLERK'S OFFICEIN RE: VIOXX MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION

MDL No. 1657

## TRANSFER ORDER

**Before the entire Panel\***: Plaintiffs in the six actions listed on Schedule A move pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), asking the Panel to vacate its orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in MDL No. 1657. Defendant Merck & Co., Inc., opposes the motions.

After considering all counsel's argument, we find that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana, and that transfer of these actions to the Eastern District of Louisiana for inclusion in MDL No. 1657 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. We further find that transfer of these actions is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims relating to Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

The parties can present any pending motions for remand to state court to the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

\* Judges Heyburn and Motz took no part in the disposition of this matter.

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Process \_\_\_\_\_  
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CtRmDep \_\_\_\_\_  
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**IN RE: VIOXX MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 1657

**SCHEDULE A**

EDLA  
SEC. L/3

District of Alaska

Mary M. Charles, etc. v. Merck & Co., Inc., et al., C.A. No. 4:07-21

08-955

Northern District of Mississippi

Cecelia Jensen, etc. v. Merck & Co., Inc., et al., C.A. No. 4:07-166

08-956

Charles Erving, et al. v. Merck & Co., Inc., et al., C.A. No. 4:07-169

08-957

Southern District of Mississippi

Dianne Dalton, et al. v. Merck & Co., Inc., C.A. No. 3:07-576

08-958

Eastern District of New York

Sergei Chepilko v. Merck & Co., Inc., C.A. No. 1:07-4098

08-959

Southern District of New York

The People of the State of New York, et al. v. Merck & Co., Inc., C.A. No. 1:07-8434

08-960

## Exhibit C

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

United States Court  
Southern District of Texas  
ENTERED

DEC 06 2004

Michael N. Milby, Clerk of Court

JEFFREY L. DENNY, et al.,

Plaintiffs,

v.

MERCK & CO., INC., et al.,

Defendants.

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CIVIL ACTION NO. G-04-526

**ORDER GRANTING DEFENDANT'S MOTION TO STAY  
ALL PROCEEDINGS PENDING TRANSFER DECISION  
BY JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

This VIOXX claim has already generated a considerable amount of pretrial wrangling and procedural posturing. Plaintiffs Jeffrey and Molly Denny (collectively, "Plaintiffs") allege that Jeffrey Denny suffered personal injuries as a result of ingesting VIOXX. They filed suit in the 239th Judicial District Court in Brazoria County on May 29, 2003. Merck & Co., Inc. ("Merck") removed the case to this Court on September 11, 2003. This Court *sua sponte* transferred the case to the Tyler Division of the Eastern District of Texas on November 14, 2003. The Honorable Leonard Davis of the Eastern District of Texas remanded the case back to the Brazoria County state court. Merck removed the case back to this Court on August 31, 2004. Now before the Court is Merck's Motion to Stay All Proceedings Pending a Transfer Decision by the Judicial Panel on Multidistrict Litigation. For the following reasons, the Motion is **GRANTED**.

VIOXX is a painkiller often prescribed for arthritis patients. On September 30, 2004, Merck voluntarily withdrew VIOXX from the market because of evidence indicating it created a higher risk

of heart attack and stroke. Since Merck announced the withdrawal, a veritable avalanche of VIOXX claims have been filed in federal district courts all over the country. Indeed, one cannot watch daytime television or read a newspaper without seeing lawyers advertising for VIOXX patients. Given the explosion in VIOXX litigation over the past couple of months, it is inevitable to this Court that the Judicial Panel on Multidistrict Litigation ("MDL") will eventually consolidate these claims.

Plaintiffs argue that a stay is inappropriate because 28 U.S.C. § 1407, the statute authorizing transfer to the MDL for consolidation, does not expressly grant federal district courts the power to stay proceedings prior to transfer. Plaintiffs may be correct, but that avails them nothing. The power to stay is well established and particularly apt here. "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936). It would not be efficient for this Court to invest its limited time and resources in this claim, only for it to be transferred to MDL. Moreover, both sides will benefit by having a court familiar with the complex issues that arise in pharmaceutical claims.

Accordingly, Merck's Motion to Stay All Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation is hereby **GRANTED**. This case is administratively closed until the MDL issues its ruling.

**IT IS SO ORDERED.**

DONE this 3<sup>rd</sup> day of December 2004, at Galveston, Texas.

  
SAMUEL B. KENT  
UNITED STATES DISTRICT JUDGE

## Exhibit D

Case 1:05-cv-04865-SJ-RLM Document 16 Filed 11/22/2005 Page 1 of 6

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
**EVERARDO S. AGUILAR,**

**Plaintiff,**

**-against-**

**MERCK & CO., INC., et al.,**

**Defendants.**  
\_\_\_\_\_x

**MEMORANDUM AND ORDER**

**05-CV-4865 (SJ)**

**ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:**

Currently pending before this Court is an application by defendant Merck & Co., Inc. ("defendant" or "Merck") to stay this action pending a decision by the Judicial Panel on Multidistrict Litigation ("the MDL Panel") whether to transfer the case as a "tag-along" action to In re VIOXX Products Liability Litigation, MDL No. 1657, an MDL action pending in the Eastern District of Louisiana. Plaintiff Everardo S. Aguilar ("plaintiff" or "Aguilar") has consented to stay discovery only, has cross-moved to remand the case to state court and opposes any stay of that motion.

For the reasons that follow, defendant's motion to stay this action is granted in its entirety, and the motion to remand is deferred until the issue of transfer is resolved by the MDL Panel.

**BACKGROUND**

On September 21, 2005, plaintiff commenced this action in New York State Supreme Court, Queens County, against Merck (the manufacturer of the prescription drug Vioxx) and a series of medical providers who are alleged to have improperly prescribed Vioxx to plaintiff. Merck removed the action to this Court on October 17, 2005, on the basis of diversity

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jurisdiction, contending that the non-diverse medical providers were fraudulently joined in order to defeat diversity jurisdiction.

On October 31, 2005, Merck moved to stay all further proceedings in this district pending a decision by the MDL Panel on whether the case should be transferred to the MDL Court in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1407.<sup>1</sup> On November 7, 2005, the MDL Panel issued its thirtieth conditional transfer order of tag-along cases, which, absent an objection within 15 days, would transfer this case and others to the MDL Court. See 11/15/05 Letter to the Court from Vilia B. Hayes and Conditional Transfer Order (CTO-30), appended thereto.<sup>2</sup> That same day, plaintiff moved in this district to remand the instant action to state court. See Memorandum of Law in Support of Plaintiff's Motion for an Order Remanding this Matter to State Court ("Pl. Mem."). Plaintiff resists having the remand motion deferred until after the MDL Panel has transferred the case. See id. at 5-7; Plaintiff's Partial Opposition to Merck's Motion for Stay.

#### DISCUSSION

As plaintiff correctly contends (see Pl. Mem. at 5), the pendency of a request to transfer a case to an MDL proceeding does not divest the transferor court of the authority to resolve a motion to remand the case to state court. See, e.g., JPML R. 1.5; Evans v. Merck & Co., Inc.,

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<sup>1</sup> The MDL Panel established the MDL proceeding on February 16, 2005. See In re VIOXX Prods. Liab. Litig. (MDL 1657), 360 F.Supp.2d 1352 (J.P.M.L. Feb. 16, 2005). To date, more than 2,500 cases have been transferred to or filed directly in the MDL proceedings. See Memorandum of Law in Support of Motion of Defendant Merck & Co., Inc. to Stay All Proceedings Pending a Decision on Transfer by the Judicial Panel on Multidistrict Litigation at 3.

<sup>2</sup> This Court has no information as to whether plaintiff has filed with the MDL Panel an objection to transfer.

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No. 05-1323-T/AN, 2005 WL 3008643, at \*1 (W.D. Tenn. Nov. 9, 2005). Even after the MDL Panel has issued a conditional transfer order, the transferor court retains the discretion to grant or deny a motion to stay consideration of a jurisdictional challenge. See id.; North v. Merck & Co., Inc., No. 05-CV-6475L, 2005 WL 2921638, at \*1 (W.D.N.Y. Nov. 4, 2005). The jurisdiction of the transferor court does not end until the order of the MDL Panel transferring the case has been filed with the MDL Court. See David F. Herr, Annotated Manual for Complex Litigation § 20.131 (4th ed. 2004) (hereinafter "Manual for Complex Litigation").

In connection with the Vioxx litigation, the MDL Panel has expressly observed that "[t]he pendency of a motion to remand to state court is not a sufficient basis to avoid inclusion in Section 1407 proceedings." In re VIOXX Prods. Liab. Litig., 360 F.Supp.2d 1352, 1354 (J.P.M.L. Feb. 16, 2005). Indeed, in establishing the Vioxx MDL, the Panel transferred to the MDL Court two actions with pending motions to remand to state court. See id. at 1353-54. According to the MDL Panel, the motions to remand in those two cases, "as well as in any other MDL-1657 actions[,] can be presented to and decided by the transferee judge." Id. at 1354 (citing In re Ivy, 901 F.2d 7 (2d Cir. 1990)).

The Panel's decision is consistent with the law in the Second Circuit, where the "preferable practice" in MDL litigation is to allow the transferee court to resolve jurisdictional issues that implicate common questions of law and fact arising in numerous cases. Medical Soc'y v. Conn. Gen. Corp., 187 F.Supp.2d 89, 91 (S.D.N.Y. 2001) (citing Ivy, 901 F.2d 7); see, e.g., North, 2005 WL 2921638, at \*1 (noting, in Vioxx case, that the Second Circuit has adopted the "general rule" of deferring decisions on remand motions until after the MDL Panel has transferred the case); DeBono v. American Home Prods. Corp., No. 04 Civ. 3810(DC), 2005 WL

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2601177, at \*1 (S.D.N.Y. Nov. 16, 2004) (“[T]he Second Circuit has observed that an MDL Court is often best suited to resolve remand motions, especially when the issues involved are likely to recur.”). As the Second Circuit observed in Ivy, where the jurisdictional issue “is easily capable of arising in hundreds or even thousands of cases in district courts throughout the nation,” and “involves common questions of law and fact,” “[c]onsistency as well as economy is . . . served” by having the jurisdictional objections “heard and resolved by a single court . . .” Ivy, 901 F.2d at 9; see Manual for Complex Litigation § 20.131 (“[T]he pendency of motions raising questions common to related actions can itself be an additional justification for transfer.”).

The aforesaid general rule should be followed in the instant case. Merck has challenged the joinder of doctors and/or pharmacies in other Vioxx cases in this circuit, and the plaintiffs’ motions to remand have been deferred until after transfer to the MDL litigation, on the ground that “the issues raised in plaintiff’s remand motion are not unique to this case.” North, 2005 WL 2921638, at \*2; Krieger v. Merck & Co., Inc., No. 05-CV-6338L, 2005 WL 2921640, at \*2 (W.D.N.Y. Nov. 4, 2005); see also Evans, 2005 WL 3008643, at \*1 (“[T]he jurisdictional issues raised in this case are similar to those raised in other [Vioxx] cases that have been or will be transferred to the MDL proceeding.”); Walker v. Merck & Co., Inc., No. 05-CV-360-DRH, 2005 WL 1565839, at \*2 (S.D. Ill. June 22, 2005) (“[I]t is almost certain that the transferee court will hear and decide many of the same issues Plaintiffs ask this Court to tackle in ruling on their motion to remand.”). To be sure, a number of Vioxx decisions from outside this circuit have

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resolved remand motions prior to the MDL Panel's decision on transfer.<sup>3</sup> Nevertheless, "there are many more that have chosen to grant a stay," Evans, 2005 WL 3008643, at \*1 (collecting cases), including the two decisions from within this circuit. North, 2005 WL 2921638; Krieger, 2005 WL 2921640, at \*2 (granting stay and noting that courts around the country have stayed Vioxx cases "pending their transfer to the MDL, including more than 125 with pending remand motions."); see, e.g., West v. Merck & Co., Inc., No. 05-1166-T/AN, 2005 WL 1630034 (W.D. Tenn. July 7, 2005); Walker, 2005 WL 1564839. Moreover, at a proceeding in the Vioxx MDL litigation, Judge Eldon B. Fallon, the district judge presiding over the MDL proceeding, expressly acknowledged the advantages of having a single judge decide the many motions to remand, and he assured the parties that he would deal with the motions "as quickly as possible . . ." Transcript of 6/23/05 Status Conference in In re VIOXX Prods. Liab. Litig., at 21 (appended as Exhibit A to the Declaration of Vilia B. Hayes dated 11/22/05 ["Hayes Decl"]).

Having considered these decisions and the parties' arguments, this Court concludes "that having the jurisdictional issues decided in one proceeding will promote judicial economy and conserve judicial resources," Evans, 2005 WL 3008643, at \*2, and will minimize "the risk of inconsistent rulings . . . ." North, 2005 WL 2921638, at \*2 n.2 (quoting Purcell v. Merck & Co., No. 05 CV 0443-L(BLM), slip. op. at 4-5 (S.D. Cal. June 6, 2005) (Hayes Decl. Ex. B)); see North, 2005 WL 2921638, at \*2 ("I agree with Merck that the objectives of the MDL process—namely the avoidance of inconsistent rulings and the conservation of judicial resources—are best

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<sup>3</sup> See, e.g., Plubell v. Merck & Co., Inc., No. 05-0831-CV-W-HFS, 2005 WL 2739036 (W.D. Mo. Oct. 20, 2005); Rabe v. Merck & Co., Inc., Nos. Civ. 05-363-GPM, 05-378-GPM, 2005 WL 2094741 (S.D. Ill. Aug. 25, 2005); Kantner v. Merck & Co., Inc., No. 1:04CV2044-JDT-TAB, 2005 WL 277688, at \*3 (S.D. Ind. Jan. 26, 2005).

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met by allowing the MDL Court to decide plaintiff's motion to remand."). "[A]ny prejudice to the plaintiff resulting from a stay would be minimal," Evans, 2005 WL 3008643, at \*2, and "does not outweigh the judicial economy interests" served by granting a stay. Walker, 2005 WL 1565839, at \*2; see North, 2005 WL 2921638, at \*2; Krieger, 2005 WL 2921640, at \*2. Therefore, Merck's motion for a stay is granted in its entirety.

**CONCLUSION**

For the foregoing reasons, Merck's motion to stay this proceeding pending the MDL Panel's decision on transfer is granted and plaintiff's cross-motion to remand is deferred until the issue of transfer has been resolved.

**SO ORDERED.**

**Dated: Brooklyn, New York  
November 22, 2005**

**ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE**

## Exhibit E

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF CIVIL ACTIONS AGAINST  
MERCK & CO., INC., AS LISTED IN  
ATTACHMENT 1

ORDER TO STAY

Defendant Merck & Co., Inc. ("Merck") removed these 11 negligence and products liability actions from New York State Supreme Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. A list of these 11 actions (identified in order of the WDNY civil docket number) is attached to this Order.

Plaintiffs, who are represented by same law firm, allege claims against Merck concerning the manufacture, sale, and distribution of the prescription drug Vioxx. Plaintiffs also named as defendants a number of New York corporations that operate pharmacies throughout the State. In its notices of removal, however, Merck argued that the pharmacy defendants were fraudulently joined because no reasonable basis exists for plaintiffs' negligence and products liability claims against them.

Merck has filed motions to stay the actions pending the issuance of conditional orders by the Judicial Panel on Multidistrict Litigation ("JPML") transferring the cases as "tag-along" actions to *In re Vioxx Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1657, an MDL action that has been established in the Eastern District of Louisiana.<sup>1</sup>

For the reasons set forth in this Court's Decision and Order in two other nearly identical

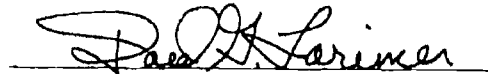
<sup>1</sup> On February 16, 2005, the Panel transferred 138 civil actions to the MDL, which involve common questions of fact concerning the alleged increased health risks associated with the anti-inflammatory drug, Vioxx. Since that time, more than 3,000 additional actions have been transferred to the MDL, and it appears that the number continues to grow.

actions, *North v. Merck*, 2005 WL 2921638 (W.D.N.Y. Nov. 4, 2005) and *Krieger v. Merck*, 2005 WL 2921640 (W.D.N.Y. Nov. 4, 2005), I find that Merck's motions to stay should be granted in these 11 cases as well. The objectives of the MDL process, that is the avoidance of inconsistent rulings and the conservation of judicial resources, are best met by allowing the MDL court here to resolve any issues regarding whether these actions were properly removed.

**CONCLUSION**

Merck's motions to stay (Dkts.#4) are **GRANTED**.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 1, 2006.

ATTACHMENT 1

Campbell v. Merck & Co., Inc., et al	05-CV-6740L
Paterniti v. Merck & Co., Inc., et al	06-CV-6065L
Adams v. Merck & Co., Inc., et al	06-CV-6066L
Grace v. Merck & Co., Inc., et al	06-CV-6067L
Stroka v. Merck & Co., Inc., et al	06-CV-6068L
Stenzel v. Merck & Co., Inc., et al	06-CV-6069L
Porter v. Merck & Co., Inc., et al	06-CV-6070L
Ciura v. Merck & Co., Inc., et al	06-CV-6074L
Lukasik v. Merck & Co., Inc., et al	06-CV-6075L
Yates v. Merck & Co., Inc., et al	06-CV-6096L
Dempsey v. Merck & Co., Inc., et al	06-CV-6097L

CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of April, 2008, I caused a copy of the foregoing NOTICE OF MOTION OF DEFENDANT MERCK & CO., INC. TO STAY ALL PROCEEDINGS PENDING A DECISION ON TRANSFER BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, DECLARATION OF VILIA B. HAYES and MEMORANDUM OF LAW IN SUPPORT OF MOTION OF DEFENDANT MERCK & CO., INC. TO STAY ALL PROCEEDINGS PENDING A DECISION ON TRANSFER BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION to be served via first-class mail, postage prepaid, on the following:

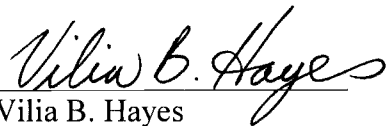
Ronald R. Benjamin, Esq.  
LAW OFFICES OF RONALD R. BENJAMIN  
126 Riverside Drive, P.O. Box 607  
Binghamton, New York 13902

The above addresses have appeared on the prior papers in this action as the office address of the attorneys for Plaintiff.

Deponent is over the age of 18 years and not a party to this action.

I further certify under penalty of perjury that under the laws of the United States of America the foregoing is true and correct.

Executed on April 4, 2008

  
Vilia B. Hayes